

**MANDATORY MINIMUM PENALTIES FOR  
SEX OFFENSES**  
IN THE  
**FEDERAL CRIMINAL  
JUSTICE SYSTEM**

UNITED STATES SENTENCING COMMISSION  
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MANDATORY MINIMUM PENALTIES FOR SEX OFFENSES  
IN THE FEDERAL CRIMINAL JUSTICE SYSTEM



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United States Sentencing Commission  
MANDATORY MINIMUM PENALTIES FOR FEDERAL SEX OFFENSES (2019)



# 1 Introduction



## Introduction

This publication is the sixth and final in the Commission’s series on mandatory minimum penalties. In 2017, the Commission published its *Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System (2017 Overview Publication)*<sup>1</sup> and subsequently issued four publications providing detailed analyses of the application of mandatory minimum penalties to specific offense types—drugs in October 2017; firearms in March 2018; the use of recidivist enhancements for drug traffickers under 21 U.S.C. § 851 in July 2018; and identity theft in September 2018.<sup>2</sup> These publications build on the Commission’s 2011 *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (2011 Mandatory Minimum Report)*,<sup>3</sup> which provided detailed historical analyses of the evolution of federal mandatory minimum penalties, scientific literature on the topic, and extensive analysis of the Commission’s own data, public comment, and expert testimony. These publications highlight recent trends in the charging of offenses carrying mandatory minimum penalties and provide updated sentencing data demonstrating the impact of those penalties.

This publication focuses on the application of mandatory minimum penalties specific to federal sex offenses. Federal sex offenses are divided into two types: (1) sexual abuse offenses (also called “contact”) offenses, *i.e.*, those offenses involving actual or attempted sexual contact with the victim regardless of the victim’s age; and (2) child pornography offenses (other than an offense related to the production of pornography depicting an actual child, which is deemed a “contact” offense).<sup>4</sup> With respect to child pornography offenses, this publication expands on the 2011 *Mandatory Minimum Report* to provide a detailed individual analysis for each of the most common child pornography offenses—distribution, receipt, and possession.

Using fiscal year 2016 data, this publication includes analyses of the two types of federal sex offenses carrying mandatory minimum penalties, sexual abuse offenses and child pornography offenses, as well their impact on the Federal Bureau of Prisons (BOP) population. In addition to analyzing child pornography offenses generally, this publication analyzes child pornography offenses by offense type, exploring differences in frequency, offender characteristics, and sentencing outcomes for distribution, receipt, and possession offenses. Where appropriate, the publication highlights changes and trends since the Commission’s 2011 *Mandatory Minimum Report*.



2 Key Findings



## Key Findings

Building directly on its previous reports and the analyses set forth in the *2017 Overview Publication*, this publication examines the use and impact of mandatory minimum penalties for sex offenses.

As part of this analysis, the Commission makes the following key findings:

### Key Findings

#### 1. Mandatory minimum penalties for sex offenses are applied less often in the federal system compared to other mandatory minimum penalties.

- Offenders convicted of a sex offense comprised only 4.2 percent (n=2,633) of federal offenders sentenced in fiscal year 2016.
- Sex offenses accounted for 19.4 percent of offenses carrying a mandatory minimum penalty in fiscal year 2016.

#### 2. Sex offenses, however, increased in number and as a percentage of the federal docket, and sex offenders were more frequently convicted of an offense carrying a mandatory minimum penalty.

- Offenders convicted of a sex offense increased from 3.2 percent (n=2,317) of federal offenders, in fiscal year 2010, to 4.2 percent (n=2,633) in fiscal year 2016.
- The number of offenders convicted of sexual abuse offenses has steadily increased since the Commission's 2011 *Mandatory Minimum Report*, from 639 offenders in fiscal year 2010 to a high of 1,148 offenders in fiscal year 2016. Additionally, the percentage of sexual abuse offenders convicted of an offense carrying a mandatory minimum penalty also increased substantially, from 21.4 percent in fiscal year 2004, to a high of 63.2 percent in fiscal year 2016.
- While also increasing over time since 2004, the number of child pornography offenders has remained relatively stable since the Commission's 2011 *Mandatory Minimum Report*, decreasing slightly from 1,675 offenders in fiscal year 2010 to 1,565 in fiscal year 2016. The percentage of child pornography offenders convicted of an offense carrying a mandatory minimum penalty, however, has generally increased, from 50.2 percent in fiscal year 2010 to a high of 61.2 percent in 2014, before leveling off to 59.6 percent in fiscal 2016.

## Key Findings

### **3. Sex offenders are demographically different than offenders convicted of other offenses carrying mandatory minimum penalties.**

- In fiscal year 2016, Native American offenders comprised a larger percentage of sexual abuse offenders than of any other offense carrying a mandatory minimum penalty. They constituted 11.7 percent of sexual abuse offenders overall and represented the largest portion (28.2%) of sexual abuse offenders convicted of an offense not carrying a mandatory minimum penalty.
- White offenders constituted over 80 percent of offenders convicted of any child pornography offense (80.9%), convicted of a child pornography offense carrying a mandatory minimum penalty (83.0%), and those subject to that penalty (83.2%). In comparison, White offenders comprised 22.7 percent, 27.2 percent, and 31.1 percent of all federal offenders, federal offenders convicted of any offense carrying a mandatory minimum penalty, and federal offenders subject to any mandatory minimum penalty, respectively.
- The average age for all child pornography offenders and child pornography offenders convicted of an offense carrying a mandatory minimum penalty was 42, five years older than the average age for federal offenders convicted of an offense carrying any mandatory minimum penalty. Nearly half of all child pornography offenders were 41 or older (48.0%).
- While the average age for sexual abuse offenders was the same as the average age of federal offenders overall (37), of those convicted of a mandatory minimum penalty, 17.6 percent were older than 50 and 20.5 percent were between 41 and 50.

### **4. Offenders convicted of sex offenses carrying a mandatory minimum penalty are sentenced to longer terms than those convicted of sex offenses not carrying a mandatory minimum penalty.**

- In fiscal year 2016, the average sentence for offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty was nearly three times longer than the average sentence for offenders convicted of a sexual abuse offense not carrying a mandatory minimum penalty (252 months compared to 86 months).
- The average sentence for child pornography offenders who faced a ten-year mandatory minimum penalty because of a prior sex offense conviction (136 months) was substantially longer than the average sentence for those offenders who were convicted of a possession offense (without a prior sex offense), which does not carry a mandatory minimum penalty (55 months).
- Child pornography offenders convicted of distribution (140 months) and receipt offenses (93 months), which carry a five-year mandatory minimum penalty, also had a longer average sentence than offenders convicted of possession offenses (55 months), who did not face a mandatory minimum penalty.



## Key Findings

**5. Although Commission analysis has demonstrated that there is little meaningful distinction between the conduct involved in receipt and possession offenses, the average sentence for offenders convicted of a receipt offense, which carries a five-year mandatory minimum penalty, is substantially longer than the average sentence for offenders convicted of a possession offense, which carries no mandatory minimum penalty.**

- In fiscal year 2016, the average sentence for receipt offenders (without a prior sex offense conviction) was two and a half years longer (85 months) than the average sentence length for possession offenders (without a prior sex offense conviction) (55 months).

**6. While still constituting a relatively small percentage of the overall prison population, the number of both sexual abuse offenders and child pornography offenders in Federal Bureau of Prisons custody has steadily increased, with both reaching population highs as of September 30, 2016.**

- Sexual abuse offenders accounted for only 3.5 percent (n=5,764) of the federal prison population as of September 30, 2016, but the number of sexual abuse offenders in a federal prison has steadily increased since fiscal year 2004, from 1,640 offenders to a high of 5,764 in fiscal year 2016. The number of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty in the federal prison population has increased at a similar rate, from 276 to 4,055, during the same time period.
- Child pornography offenders accounted for only 5.1 percent (n=8,508) of the federal prison population as of September 30, 2016, but the number of child pornography offenders in federal prison has steadily increased since fiscal year 2004, from 1,259 offenders to a high of 8,508 in fiscal year 2016. The number of offenders convicted of a child pornography offense carrying a mandatory minimum penalty in the federal prison population has increased at a similar rate, from 118 to 6,303 during the same time period.



3

Sex Offense  
Mandatory  
Minimums



### Two Categories of Sex Offenses

#### Sexual Abuse (“Contact”) Offenses

involve actual or attempted sexual contact with the victim regardless of the victim’s age, including production of child pornography

#### Child Pornography Offenses

involve the distribution, transportation, receipt, or possession of child pornography

## Statutory Mandatory Minimum Provisions Applicable to Federal Sex Offenders

For purposes of this publication, federal sex offenses are divided into two types. The first group includes all sexual abuse offenses (also called “contact” offenses), which involve actual or attempted sexual contact with the victim regardless of the victim’s age. The second group are child pornography offenses, other than an offense related to the production of pornography depicting an actual child, which is deemed a “contact” offense.<sup>5</sup> Child pornography offenses are further subdivided throughout this publication as distribution, receipt, or possession offenses. This section provides a brief overview of the two types of offenses, including the most common provisions charged.

### Sexual Abuse Offenses

Sexual abuse or contact offenses include cases in which the primary sentencing guideline was in either: (1) Chapter 2, part A, subpart 3, which concerns sexual abuse and sexual contact offenses victimizing adults or minors, excluding failure to register offenses;<sup>6</sup> or (2) Chapter 2, part G, which concerns promotion of illegal sex acts involving an adult or minor, offenses involving travel to engage in an illegal sexual act, and child pornography offenses, excluding obscenity offenses that are not cross-referenced to the child pornography guidelines.<sup>7</sup>

### Statutory Provisions

The vast majority of federal sexual abuse offenses are found in Chapters 109A and 117 of Title 18 of the United States Code. A handful of other sexual abuse offenses, including offenses related to the production of child pornography, are found in other parts of the United States Code.<sup>8</sup>

Congress has provided for mandatory minimum terms of imprisonment for many sexual abuse offenses, including the majority of such offenses that involve the victimization or attempted victimization of minors. Mandatory minimum terms exist for violations of the following sections of Title 18:

- § 1591(b)(1) and (2) (minimum ten- or 15-year term for sex trafficking of a minor depending on the age of the victim and whether offense effectuated by force, fraud, or coercion);
- § 2241(c) (minimum 30-year term for traveling across state lines with the intent to have sex with a child under 12 years of age or for crossing state lines and having sex with a child between the ages of 12 and 16 under certain aggravating circumstances);
- §§ 2251(e) and 2260(c)(1) (minimum 15-year term for production of child pornography and enhanced minimum terms if such a defendant has a prior felony conviction for an enumerated sex offense);<sup>9</sup>

Mandatory Minimum Penalties for Sexual Abuse Offenses		
10 Years	15 Years	30 Years
Sex Trafficking of a minor (section 1591(b)(2))	<ul style="list-style-type: none"> <li>• Sex trafficking of a minor under 14 years of age or by force, fraud, or coercion (section 1591(b)(1))</li> </ul>	<ul style="list-style-type: none"> <li>• Aggravated sexual abuse with children 2241(c)</li> </ul>
Solicitation of minors for prostitution or criminal sexual activity (section 2422(b))	<ul style="list-style-type: none"> <li>• Production of child pornography (sections 2251(e) and 2260(c)(1))</li> </ul>	<ul style="list-style-type: none"> <li>• Selling or buying of children for pornography 2251A(a) and (b)</li> </ul>
Transportation of minors for prostitution or criminal sexual activity (section 2423(a))		

- § 2251A(a) and (b) (minimum 30-year term for buying or selling, or otherwise transferring, children for the purpose of participating in the production of child pornography);
- § 2422(b) (minimum ten-year term for using mails or facilities or means of commerce to cause a minor to engage in prostitution or other criminal sexual activity);
- § 2423(a) (minimum ten-year term for transporting a minor in commerce for the purpose of engaging in prostitution or other criminal sexual activity); and
- § 3559(e) (mandatory life imprisonment for second conviction for certain sex offenses against minors).<sup>10</sup>

The mandatory minimum penalties for these offenses range from ten to 30 years, with enhanced mandatory penalties for offenders with convictions for certain prior sex offenses.

Many of the other sexual abuse offenses in Chapters 109A and 117 that do not carry mandatory minimum penalties outlaw similar conduct to the statutes listed above but involve an adult, rather than a minor, victim.<sup>11</sup>

### Guideline Provisions

The sentencing guidelines for sexual abuse offenses are contained in Chapter 2, part A, subpart 3 and part G of the *Guidelines Manual*. Like the penal statutes governing sexual abuse offenses, the relevant guidelines cover a wide variety of conduct involving both adult and minor victims.<sup>12</sup>





Statutory Penalties for Child Pornography Offenses		
	Distribution and Receipt	Possession
No Prior Sex Conviction	5 to 20 years	0 to 10 years (or to 20 years if victim under 12)
Prior Sex Conviction	15 to 40 years	10 to 20 years

### Child Pornography Offenses<sup>13</sup>

#### Statutory Provisions

Federal law broadly prohibits a variety of acts related to the distribution,<sup>14</sup> transportation (including by shipping or mailing), importation, receipt, and possession of child pornography, including attempted acts and conspiracies to commit such acts.<sup>15</sup> The four primary types of offenses (distribution, transportation, receipt, and possession) are set forth in Chapter 110 of Title 18 of the United States Code at 18 U.S.C. §§ 2251, 2252, 2252A, and 2260. The statutes prohibit distribution, shipping, and transportation of child pornography regardless of whether such activities have a commercial or non-commercial purpose (e.g., exchanging child pornography through “peer-to-peer” Internet file-sharing programs).<sup>16</sup> The offense of receipt requires a defendant’s knowledge that he is coming into possession of child pornography at the time that the image is received.<sup>17</sup> That a defendant knowingly possesses child pornography—a lesser-included offense of receipt—does not necessarily mean that the defendant previously knowingly received it.<sup>18</sup> An additional statute, 18 U.S.C. § 1466A, prohibits possession, receipt, distribution, and production of “obscene visual representations of the sexual abuse of children;” its violation is considered a child pornography offense.<sup>19</sup>

The statutory penalty ranges for violations of these provisions vary in severity depending on both the act involved and the defendant’s prior criminal record.

Transportation (including mailing or shipping), receipt, distribution, and possession with the intent to distribute or sell child pornography offenses each carry a mandatory minimum term of five years of imprisonment and a maximum term of 20 years.<sup>20</sup> If a defendant has a prior federal or state conviction for one or more enumerated sex offenses, however, the penalty range increases to a mandatory minimum term of 15 years and a maximum term of 40 years of imprisonment.<sup>21</sup> Section 2252A(b)(3) provides a separate punishment range of up to 15 years in prison for production (as well as distribution) of a “morphed” image of an actual, identifiable minor appearing to engage in sexually explicit conduct. No statutory mandatory minimum applies to this offense.

Possession of child pornography is punishable by up to ten years (or up to 20 years if the offense involved a minor under 12) in federal prison but—unlike the other offenses involving actual child pornography—does not carry a mandatory minimum term of imprisonment.<sup>22</sup> If a defendant has a prior federal or state conviction for one or more enumerated sex offenses, however, the penalty range for possession increases to a mandatory minimum term of ten years and a maximum term of 20 years of imprisonment.<sup>23</sup>

Violations of section 1466A incorporate the penalties provided for in sections 2252A. Violations involving receipt, distribution, or production of “obscene visual representations of the sexual abuse of children” carry a mandatory minimum penalty of five years of imprisonment and a maximum of 20 years of imprisonment,<sup>24</sup> while violations of section 1466A involving possession of such obscene material carry no mandatory minimum penalty and have a statutory maximum of ten years of imprisonment.<sup>25</sup> The penalties for violations of section 1466A are increased if the defendant has a prior conviction for an enumerated sex offense, as they are under the other child pornography statutes.<sup>26</sup>

### Guideline Provisions

Child pornography offenders (other than those convicted of a production offense) are sentenced under §2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor).<sup>27</sup>

In its past reports, the Commission has explained that “[t]hrough creating new offenses, enacting new mandatory minimums, increasing statutory maximums, and providing directives to the Commission, Congress has repeatedly expressed its will regarding appropriate penalties for child pornography offenders.”<sup>28</sup> With respect to the child pornography guidelines, “Congress has specifically expressed an intent to raise penalties associated with certain child pornography offenses several times through directives to the Commission and statutory changes aimed at increasing the guideline penalties and reducing the incidence of downward departures.”<sup>29</sup>

### Statutory and Guideline Relief Provisions

Offenders may receive relief from the mandatory minimum penalty if the prosecution files a motion based on the defendant’s “substantial assistance” pursuant to 18 U.S.C. § 3553(e).<sup>30</sup> When such motion is filed, section 3553(e) authorizes the court to impose a sentence below the mandatory minimum penalty.

As directed by Congress, the Commission incorporated this statutory mechanism for relief from mandatory minimum penalties into the guidelines. USSG §5K1.1 authorizes a departure from the guideline range if the offender provided substantial assistance to law enforcement and the government files a motion to that effect.<sup>31</sup> Even where §5K1.1 applies, however, the court can only sentence below the mandatory minimum penalty when the government also files a motion pursuant to 18 U.S.C. § 3553(e).<sup>32</sup>





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4 Data Analysis



## The Commission's Updated Study of Sex Offense Mandatory Minimum Penalties

In its 2011 *Mandatory Minimum Report*, the Commission made several recommendations to Congress regarding the use of, and improvement to, mandatory minimum penalties generally and with respect to the four major offense types. At that time, the Commission concluded that further study was needed before it could offer specific recommendations with respect to sex offenses.<sup>33</sup> However, the Commission noted that “preliminary review of the available sentencing data suggests that the mandatory minimum penalties for certain child pornography offenses and the resulting guidelines sentencing ranges may be excessively severe and as a result are being applied inconsistently.”<sup>34</sup>

First, it noted that offenders convicted of child pornography offenses carrying a mandatory minimum penalty had the highest rate of non-government sponsored below range sentences of any offenders convicted of any offense carrying mandatory minimum penalty, which was consistent with the views expressed by federal judges at the time of the report that the mandatory minimum penalties for receipt and distribution of child pornography were too high.

Second, the Commission noted that it appeared that prosecutors were frequently using their discretion to avoid charging child pornography offenses carrying mandatory minimum penalties. In the 2011 *Mandatory Minimum Report*, a review of a 20 percent sample of offenders sentenced under §2G2.2 found that “over half (53.0%) of offenders convicted of possession of child pornography, which does not carry a mandatory minimum penalty, engaged in distribution conduct that could have been prosecuted under a statute carrying a mandatory minimum penalty.”<sup>35</sup> Similarly,

the Commission explained that “there [did] not seem to be a significant practical difference in the offense conduct that constitutes possession of child pornography, which does not carry a mandatory minimum penalty, and offense conduct that constitutes receipt of child pornography, which carries a five-year mandatory minimum penalty.”<sup>36</sup> The Commission stated that it would undertake a more comprehensive analysis of child pornography offenses, including the conduct underlying these offenses.

### 2011 RECOMMENDATIONS

In the 2011 *Mandatory Minimum Report*, the Commission concluded that mandatory minimum penalties and the resulting guideline ranges for certain child pornography offenses may be excessively severe and, as a result, were being applied inconsistently. In particular, it noted that offenders convicted of child pornography offenses carrying a mandatory minimum penalty had the highest rate of non-government sponsored below range sentences of any offenders convicted of any offense carrying a mandatory minimum sentence.

The Commission further explored this issue in its 2012 *Report to the Congress: Federal Child Pornography Offenses*,<sup>37</sup> where the Commission’s analysis again demonstrated that, of offenders sentenced under §2G2.2 convicted of possession of child pornography as the most serious offense of conviction, the overwhelming majority (95.3%) had engaged in knowing receipt or distribution conduct that, had it been charged, would have carried a five-year mandatory minimum penalty.<sup>38</sup> The Commission concluded, “after reviewing over 2,000 cases of offenders sentenced for receipt and possession offenses in fiscal year 1999, 2000, 2010,

and 2012 . . . that ‘there appears to be little difference in the offense seriousness between typical receipt cases and typical possession cases,’” and, therefore, “to reduce the unwarranted sentencing disparities resulting from inconsistent application of the mandatory minimum penalty for receipt offenses,” the Commission recommended that “Congress align the statutory penalties for receipt and possession.”<sup>39</sup>

Since the 2011 *Mandatory Minimum Report* and 2012 *Child Pornography Report*, the Commission has continued its study of the scope, use, and impact of mandatory minimum penalties in the federal system, providing regular updates through the issuance of Quick Facts publications, as well as in testimony before Congress. The Commission provides this publication to update the information and analyses in its 2011 *Mandatory Minimum Report* and to further inform discussion of the Commission’s recommendations regarding the use of mandatory minimum penalties for sex offenses.

### 2011 RECOMMENDATIONS

In the 2011 *Mandatory Minimum Report* and the 2012 *Child Pornography Report*, Commission analysis demonstrated that there appeared to be little meaningful difference in offense seriousness between the typical receipt case, which requires a five-year mandatory minimum penalty, and the typical possession case, which does not require a mandatory minimum penalty. The Commission therefore recommended that Congress align the statutory penalties for receipt and possession to reduce unwarranted sentencing disparities resulting from inconsistent application of the mandatory minimum penalty for receipt cases.

Focusing on sex offenses carrying a mandatory minimum penalty, this publication analyzes 62,251 cases from the Commission’s fiscal year 2016 datafile,<sup>40</sup> identifying relevant offender and offense characteristics, including demographic data and basic criminal history information. After noting trends in sex offenses carrying mandatory minimum penalties overall, this publication addresses the two types of sex offenses separately. First, this publication discusses sexual abuse (“contact”) offenses, providing comparisons between offenders convicted of a sexual abuse offense, offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty, and offenders who remained subject to a sexual abuse mandatory minimum penalty at sentencing. Second, it discusses child pornography offenses generally and by offense type, comparing distribution, receipt, and possession offenses. With respect to possession offenses, it also provides more detailed analysis regarding possession offenses, which do not carry a mandatory minimum penalty and possession offenses with a prior sex offense conviction, triggering the ten-year mandatory minimum penalty.

For each of these two types of sex offenses, the Commission provides data about sentencing outcomes involving the application of the mandatory minimum penalty. Where appropriate, this publication highlights key changes between the data set forth in the Commission’s 2011 *Mandatory Minimum Report* and the fiscal year 2016 sentencing data.

The Commission intends that the data in this publication will further inform the ongoing discussion regarding mandatory minimum penalties among Congress, the Department of Justice, and others.





## Recent Trends in Mandatory Minimum Penalties

As discussed in the 2017 *Overview Publication*, the prevalence of convictions for an offense carrying any mandatory minimum penalty among all federal offenders decreased in fiscal year 2016. From fiscal years 1991 to 2013, the percentage of federal offenders convicted of an offense carrying a mandatory minimum penalty fluctuated between 26.0 percent and 31.9 percent. Between 2013 and 2016, however, the percentage has decreased, to 21.9 percent in fiscal year 2016. While the percentage of offenders convicted of an offense carrying a mandatory minimum penalty steadily decreased, the percentage of offenders subject to a mandatory minimum at sentencing remained relatively stable during the same time period, falling only slightly from 14.5 percent in fiscal year 2010 to 13.4 percent in fiscal year 2016. This is because offenders in recent years have been increasingly less likely to receive relief from a mandatory minimum penalty through a substantial assistance motion or application of the statutory safety valve. In fiscal year 2016, 38.7 percent offenders convicted of an offense carrying a mandatory minimum penalty received relief, down from 46.7 percent in 2010.<sup>41</sup>

## Overall Prevalence of Sex Offenses Carrying Mandatory Minimum Penalties

Sex offenses continued to constitute a small percentage of federal criminal cases overall. In fiscal year 2016, of the 62,251 offenders sentenced and included in this analysis, only 4.2 percent (n=2,633) involved sex offenses. Of those, the majority (56.4%, n=1,578) were convicted only of a child pornography offense, while 40.6 percent (n=1,055) were convicted only of a sexual abuse offense. Three percent (n=80) were convicted of both type of offenses.

Although sex offenses have and continued to be a small percentage of the federal criminal docket, they have increased both as a number and as a percentage of the federal docket since the Commission's 2011 *Mandatory Minimum Report* (3.2%, n=2,317).<sup>42</sup>

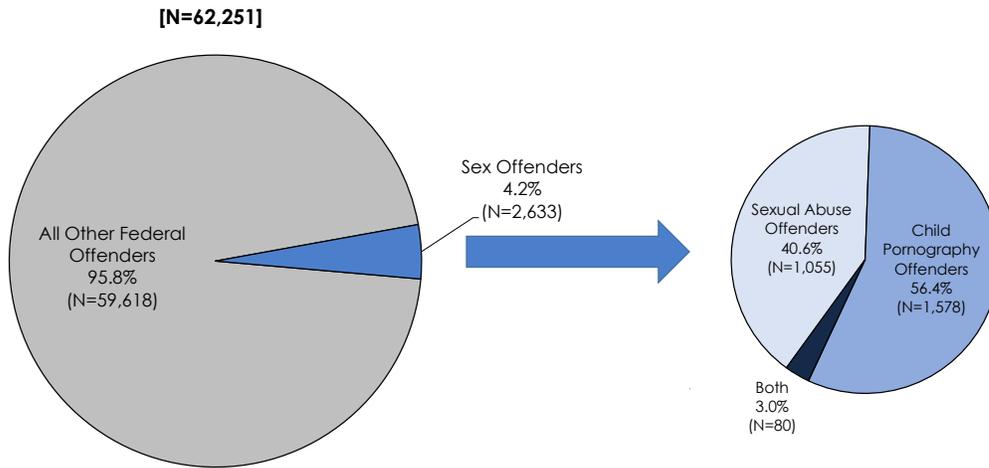
### Sexual Abuse Offenses

#### Prevalence of Sexual Abuse Offenses

#### *How Often Were Offenders Charged with a Sexual Abuse Offense?*

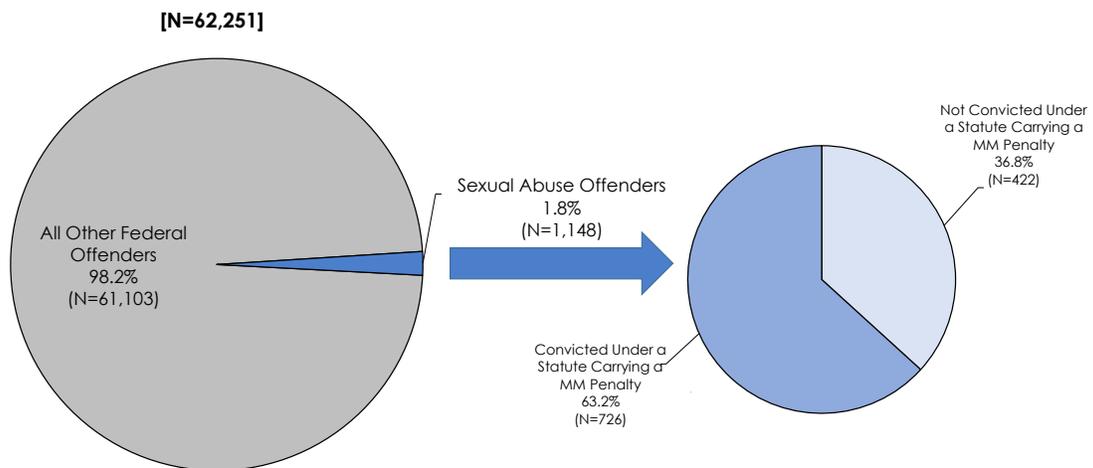
In fiscal year 2016, there were 1,148 offenders convicted of a sexual abuse offense, constituting just 1.8 percent of all federal offenders that year. Of those 1,148 offenders, the majority (63.2%, n=726) were convicted of a sexual abuse offense carrying a mandatory minimum penalty.

**Figure 1.** Sex Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission 2016 Datafile, USSCFY2016.

**Figure 2.** Sexual Abuse Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty  
Fiscal Year 2016

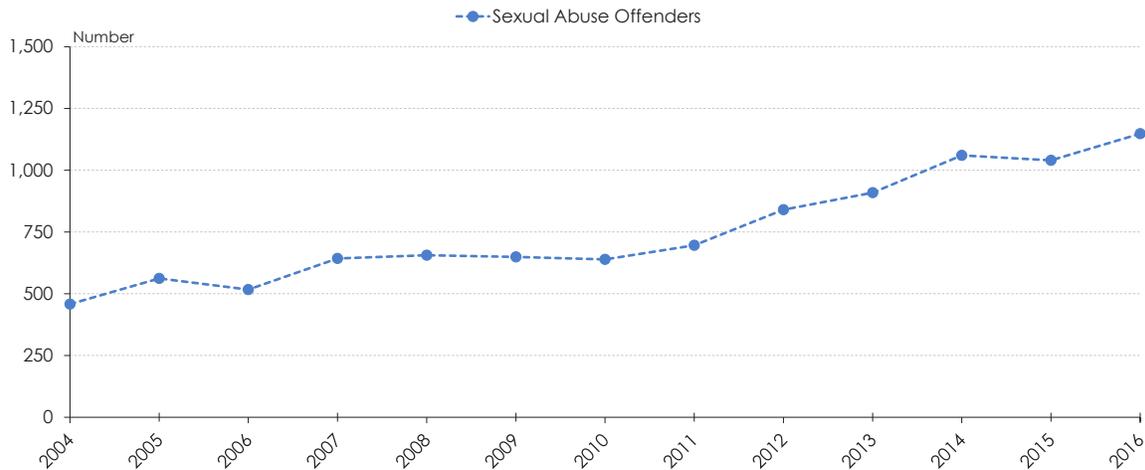


SOURCE: U.S. Sentencing Commission 2016 Datafile, USSCFY2016.



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**Figure 3.** Number of Offenders Convicted of Sexual Abuse Offenses  
Fiscal Years 2004 - 2016

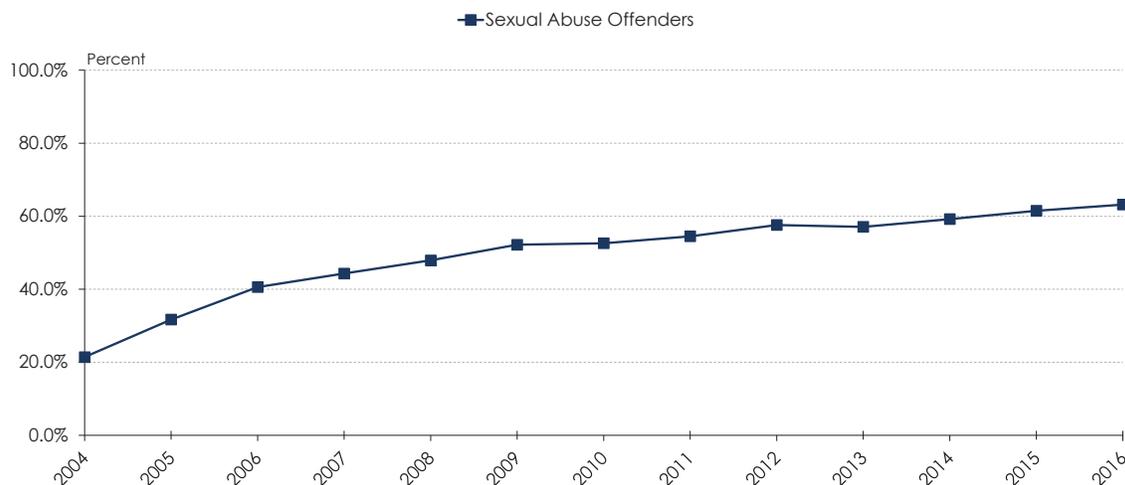


SOURCE: U.S. Sentencing Commission 2004 through 2016 Datafiles, USSCFY2004-USSCFY2016.

Although still a small percentage of the overall criminal docket, the number of sexual abuse offenses continued to increase, as did the percentage of sexual abuse offenders convicted of an offense carrying a mandatory minimum penalty. In fiscal year 2016, the number of offenders convicted of sexual abuse offenses reached a high of 1,148,<sup>43</sup> generally increasing each year since fiscal year 2004 (n=458).<sup>44</sup>

The percentage of sexual abuse offenders convicted of an offense carrying a mandatory minimum penalty also increased substantially, from 21.4 percent in fiscal year 2004, to a high of 63.2 percent in fiscal year 2016.<sup>45</sup>

**Figure 4.** Percentage of Sexual Abuse Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty  
Fiscal Years 2004 - 2016



SOURCE: U.S. Sentencing Commission, 2004 through 2016 Datafiles, USSCFY04 - USSCFY16.

*Under What Statutes and Guidelines Were Sexual Abuse Offenders Sentenced?*

The most common statutes of conviction for sexual abuse offenders convicted of an offense carrying a mandatory minimum penalty were production of child pornography (18 U.S.C. §§2251(e) or 2260(c)(1)) (51.4%, n=373), followed by using mail or facilities or means of commerce to cause a minor to engage in prostitution or other criminal sexual activity (18 U.S.C. § 2422(b)) (27.6%, n=200).<sup>46</sup>

Sexual abuse offenders were most frequently sentenced under §2G1.3 (Transportation of a Minor to Participate in a Commercial Sex Act) (38.5%, n=410) and §2G2.1 (Production of Child Pornography) (34.5%, n=368). The next largest portion were sentenced under §2A3.1 (Criminal Sexual Abuse) (13.3%, n=142). Over 90 percent of those sexual abuse offenders convicted of an offense carrying a mandatory minimum penalty were sentenced under §2G2.1 (53.0%) and §2G1.3 (41.5%).<sup>47</sup>

**Table 1.** Offense of Conviction for Sexual Abuse Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty Fiscal Year 2016

Total Number of Offenders	Convicted of an Offense Carrying a Mandatory Minimum Penalty	
	726	100.0% <sup>1</sup>
18 U.S.C. §§ 2251(e) or 2260(c)(1)	373	51.4%
18 U.S.C. § 2422(b)	200	27.6%
18 U.S.C. § 1591(b)(1)	118	16.3%
18 U.S.C. § 2423(a)	68	9.4%
18 U.S.C. § 1591(b)(2)	42	5.8%
18 U.S.C. § 2241(c)	16	2.2%
18 U.S.C. §§ 2251A(a) and (b)	4	0.6%
18 U.S.C. § 3559(e)	1	0.1%

<sup>1</sup> Offenders may be convicted under more than one statute, therefore the total percentage is greater than 100.0%.

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Table 2.** Offenders Whose Primary Guideline was a Sexual Abuse Offense Fiscal Year 2016

Total Number of Offenders <sup>1</sup>	All Sexual Abuse Offenders		Convicted of an Offense Carrying a Mandatory Minimum Penalty	
	1,066 <sup>2</sup>	100.0%	644	60.4%
Transportation of a Minor to Participate in a Commercial Sex Act (§2G1.3)	410	38.5%	267	41.5%
Production of Child Pornography (§2G2.1)	368	34.5%	341	53.0%
Criminal Sexual Abuse/Rape (§2A3.1)	142	13.3%	30	4.7%
Promoting a Commercial Sex Act – non Minor (§2G1.1)	66	6.2%	5	0.8%
Abusive Sexual Contact (§2A3.4)	34	3.2%	0	0.0%
Statutory Rape (§2A3.2)	33	3.1%	0	0.0%
Criminal Sexual Abuse of a Ward (§2A3.3)	12	1.1%	0	0.0%
Selling or Buying of Children for Use in Production of Child Pornography (§2G2.3)	1	0.1%	1	0.2%

<sup>1</sup> Three offenders' primary guideline was Child Exploitation Enterprises (§2G2.6). These cases are not necessarily sexual abuse in nature and are not included in the analysis for this report. All three of these offenders were convicted under a statute carrying a mandatory minimum penalty.

<sup>2</sup> Eighty offenders' primary guideline was Trafficking Child Pornography (§2G2.2), and one offender each had a primary guideline of First Degree Murder (§2A1.1) and Kidnapping (§2A4.1) but were also convicted of a sexual abuse offense carrying a mandatory minimum penalty. These offenders are not included in this table, but are included in all other analysis.

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.





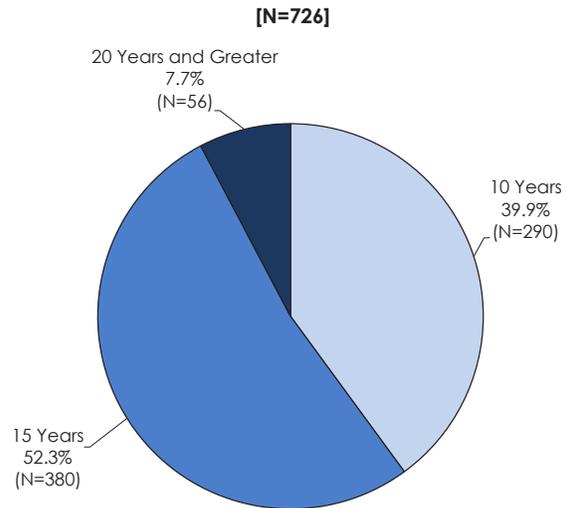
*How Severe Were Mandatory Minimum Penalties for Sexual Abuse Offenders?*

The majority of sexual abuse offenders convicted of an offense carrying a mandatory minimum penalty faced a mandatory minimum penalty of 15 years (52.3%, n=380). The next largest portion (39.9%, n=290) faced a ten-year mandatory minimum. Few offenders faced a mandatory minimum penalty of 20 years or greater (7.7%, n=56).

*Where Were Offenders Convicted of Sexual Abuse Offenses?*

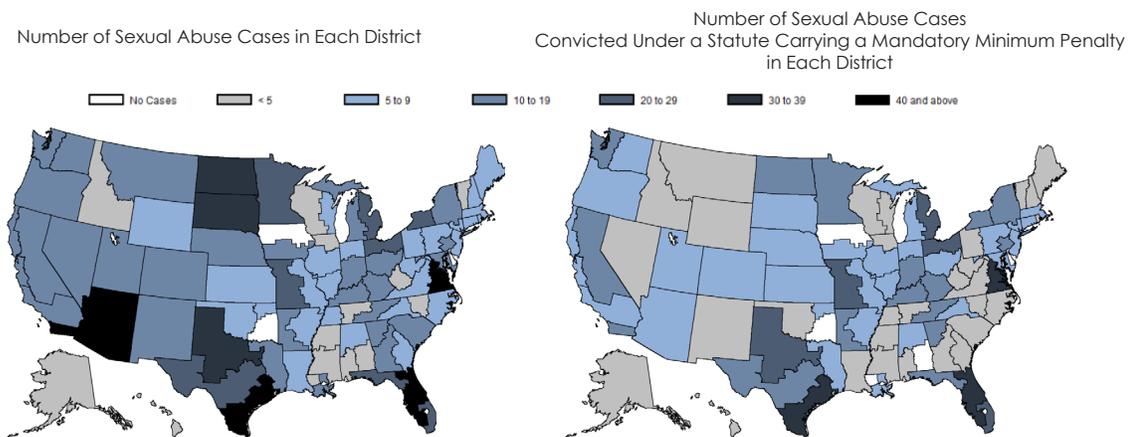
The District of Arizona had the most sexual abuse offenders (n=53) followed by the Southern District of Texas (n=50), the Eastern District of Virginia (n=40), the Southern District of California (n=40), and the Middle District of Florida (n=40). The Middle District of Florida had the most sexual abuse offenders convicted of an offense carrying a mandatory minimum penalty (n=38), followed by the Southern District of Texas (n=31), and the Eastern District of Virginia (n=30). Five districts had no sexual abuse offenders (Delaware, Virgin Islands, Northern District of Iowa, Guam, and the Eastern District of Oklahoma).<sup>48</sup>

**Figure 5.** Length of Mandatory Minimum Penalties for Sexual Abuse Offenders Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Figure 6.** Geographic Distribution of Sexual Abuse Offenders Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

## Offenders Demographics

### Race, Gender, and Citizenship

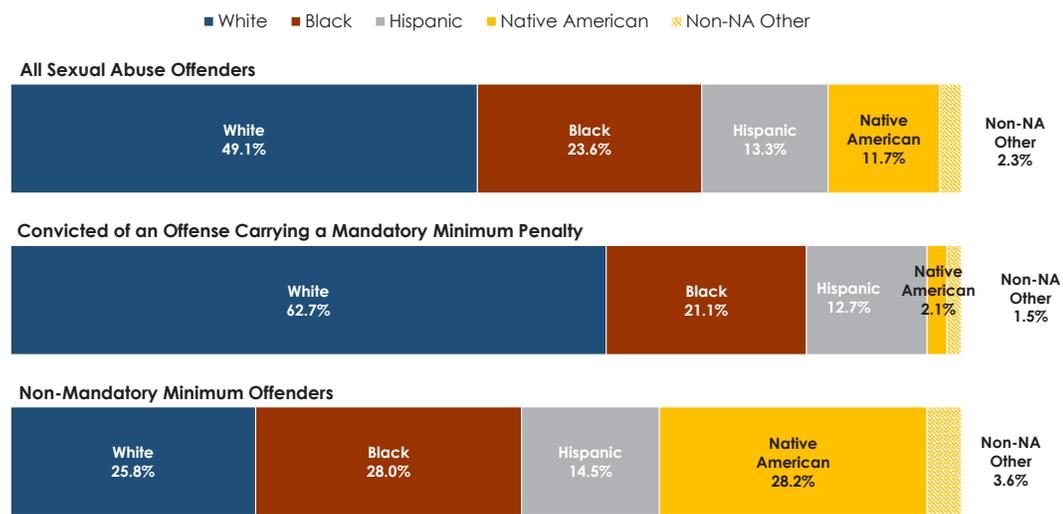
In fiscal year 2016, White offenders continued to comprise the largest demographic group of both offenders convicted of a sexual abuse offense (49.1%) and offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty (62.7%). White offenders continued to be a much larger percentage of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty than of offenders convicted of any offense carrying a mandatory minimum penalty (27.2%).<sup>49</sup> However, since the Commission’s 2011 *Mandatory Minimum Report*, White offenders decreased as a percentage within each of these categories (from 55.2% and 76.4%, respectively), while the percentage of Black and Hispanic offenders increased in each category. The percentage of sexual abuse offenders who were Black nearly doubled, from 12.5 percent to 23.6 percent, as did the percentage convicted of an offense carrying a mandatory minimum penalty who were Black, from 11.9 percent to 21.1 percent.<sup>50</sup> The percentage

of sexual abuse offenders who were Hispanic increased less dramatically than Black offenders, from 9.7 percent of sexual abuse offenders and 8.7 percent of those sexual abuse offenders convicted of an offense carrying a mandatory minimum penalty in fiscal year 2010.<sup>51</sup>

In the previous reports issued in this series, Native American offenders have been included within the “Other Race” category. However, unlike other offenses carrying mandatory minimum penalties, a notable portion of sexual abuse offenders are Native American. Thus, for sexual abuse offenses, Native American offenders are analyzed as a separate demographic group. In fiscal year 2016, Native American offenders comprised 11.7 percent of all sexual abuse offenders and represented the largest portion of sexual abuse offenders convicted under a statute not carrying a mandatory minimum penalty (28.2%). Their relatively large representation among the group of offenders convicted of a sexual abuse offense not carrying a mandatory minimum penalty is largely due to the Assimilative Crimes Act, which provides



**Figure 7.** Race of Sexual Abuse Offenders  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



United States Sentencing Commission  
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**Table 3.** Gender and Citizenship of Sexual Abuse Offenders  
Fiscal Year 2016

	All Sexual Abuse Offenders	Convicted of an Offense Carrying a Mandatory Minimum Penalty	Subject to Mandatory Minimum Penalty
<b>Total Number of Offenders</b>	<b>1,148</b>	<b>726</b>	<b>667</b>
<b>Male</b>	91.9%	94.2%	95.4%
<b>Female</b>	8.1%	5.8%	4.6%
<b>U.S. Citizen</b>	92.8%	94.4%	94.6%
<b>Non-U.S. Citizen</b>	7.2%	5.6%	5.4%

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

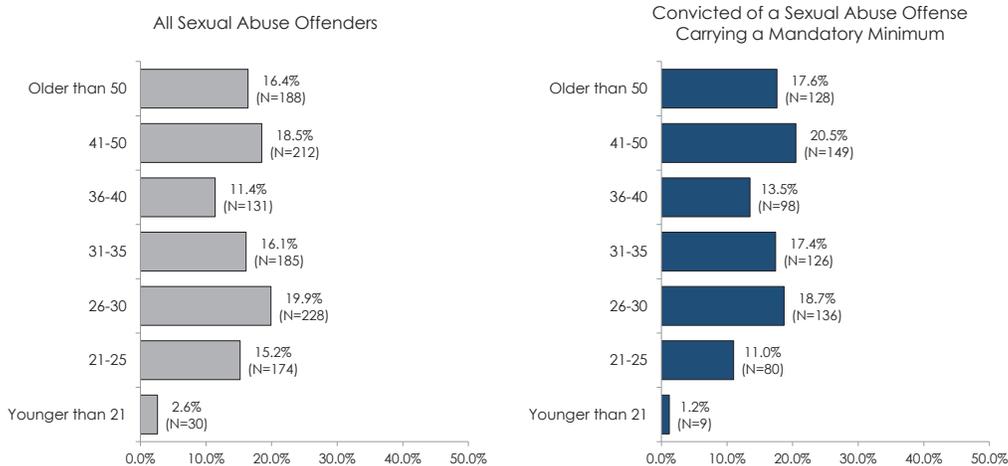
for federal jurisdiction over conduct proscribed by state law occurring in Indian country, in addition to the Major Crimes Act, which provides jurisdiction over federal offense occurring in Indian Country.<sup>52</sup>

Male offenders were convicted of sexual abuse offenses (91.9%) and of sexual abuse offenses carrying a mandatory minimum penalty (94.2%) far more frequently than female offenders.<sup>53</sup> Additionally, the overwhelming majority of offenders convicted of a sexual abuse offense (92.8%) and those convicted of a sexual abuse offense carrying a mandatory minimum penalty (94.4%) were United States citizens.

### Age

In fiscal year 2016, the average age of sexual abuse offenders was 37, the same as the average age of federal offenders overall. Offenders convicted of a sexual abuse offense and offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty were fairly evenly distributed throughout all age brackets, except there were fewer in the “younger than 21” category. For offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty, the average age was 38 and the most common age group was 41 to 50 (20.5%, n=149), followed by 26 to 30 (18.7%, n=136).

**Figure 8.** Age of Sexual Abuse Offenders  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Table 4.** Criminal History of Sexual Abuse Offenders  
Fiscal Year 2016

	All Sexual Abuse Offenders	Convicted of an Offense Carrying a Mandatory Minimum Penalty	Subject to Mandatory Minimum Penalty
<b>Total Number of Offenders</b>	<b>1,148</b>	<b>726</b>	<b>667</b>
<b>CRIMINAL HISTORY CATEGORY</b>			
I	63.6%	65.2%	66.1%
II	10.7%	9.1%	8.7%
III	9.9%	9.2%	8.7%
IV	5.7%	5.0%	5.0%
V	4.7%	6.1%	6.3%
VI	5.4%	5.5%	5.3%

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

### Criminal History

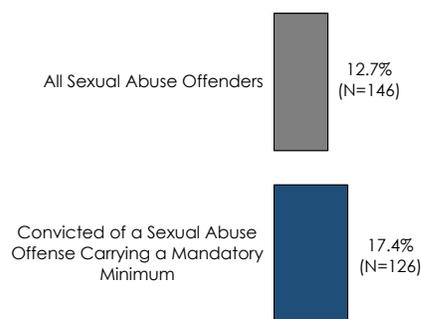
The majority of all sexual abuse offenders (63.6%) and offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty (65.2%) were in Criminal History Category I. The remaining offenders were distributed fairly evenly throughout criminal history categories. The distribution of criminal history categories for offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty largely mirrors the distribution for all sexual abuse offenders.

The proportion of offenders in Criminal History Category I is considerably larger for offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty than for offenders convicted of any offense carrying a mandatory minimum penalty (65.2% compared to 45.7%).<sup>54</sup>

### Plea and Trial Rates

In fiscal year 2016, sexual abuse offenders were over four times more likely to proceed to trial than all federal offenders (12.7% compared to 2.7% of all offenders).<sup>55</sup> Offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty were even more likely to go to trial (17.4%), substantially higher than the percentage of offenders convicted of any offense carrying a mandatory minimum penalty (5.2%).<sup>56</sup>

**Figure 9.** Trial Rate of Sexual Abuse Offenders  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.





### Relief from Mandatory Minimum Penalties

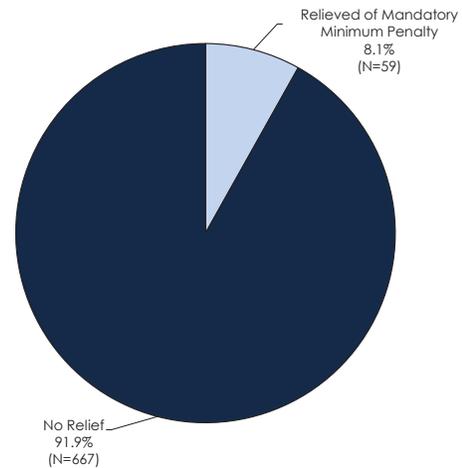
In fiscal year 2016, less than ten percent (8.1%, n=59) of sexual abuse offenders were relieved of the mandatory minimum penalty at sentencing pursuant to 18 U.S.C. § 3553(e) for rendering substantial assistance to the government. This is a substantially lower rate than that for offenders convicted of any offense carrying a mandatory minimum penalty (38.7%).<sup>57</sup>

### Demographics

White offenders comprised over half of the offenders subject to a sexual abuse mandatory minimum penalty at sentencing (64.3%). Black offenders comprised the next largest portion at 19.0 percent.

In fiscal year 2016, Black offenders received substantial assistance at the highest rate (17.0%) of any demographic group, an increase from the rate at the time of the Commission’s last report (12.5%).<sup>58</sup> White offenders (5.7%), Hispanic offenders (6.5%), and Native American offenders (6.7%) received substantial assistance relief from the mandatory minimum penalty at similar rates to each other. No Other Race (Non-Native American)<sup>59</sup> offenders received substantial assistance relief. However, this group represents only 1.5 percent of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty.

**Figure 10.** Sexual Abuse Offenders Relieved of Mandatory Minimum Penalty Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

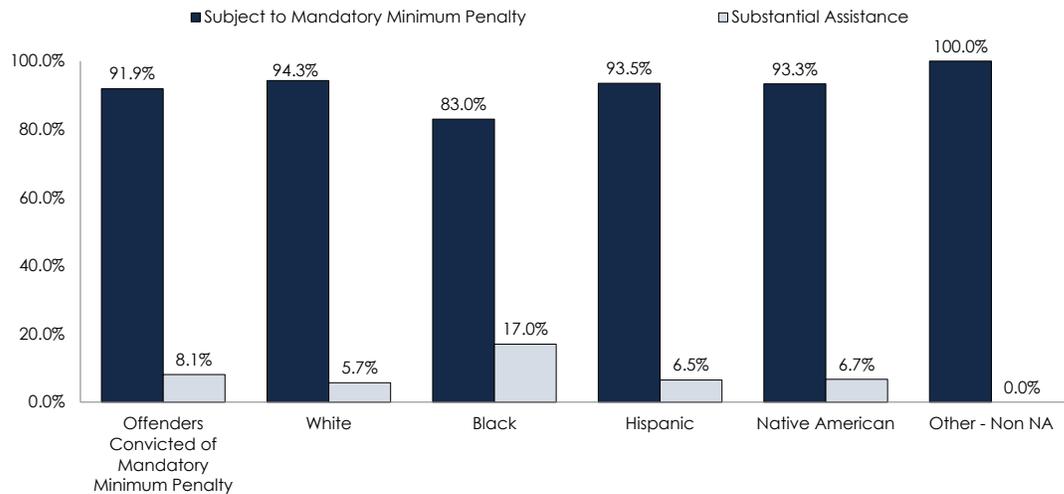
The difference between the rates of substantial assistance between Black offenders and the other demographic groups may be explained, in part, by the guideline under which these offenders were sentenced. Black offenders convicted of an offense carrying a mandatory minimum penalty were most frequently sentenced under §2G1.3 (73.2%). Offenders sentenced under §2G1.3 received substantial assistance departures at a similar rate to all offenders in fiscal year 2016 (12.4% compared to 11.7%).<sup>60</sup> In contrast, White offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty were most frequently sentenced under §2G2.1 (57.6%), for which substantial assistance departures are generally less common

**Figure 11.** Race of Sexual Abuse Offenders Subject to Mandatory Minimum Penalty Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Figure 12.** Sexual Abuse Offenders Who Were Relieved of the Penalty by Race of Offender  
Fiscal Year 2016



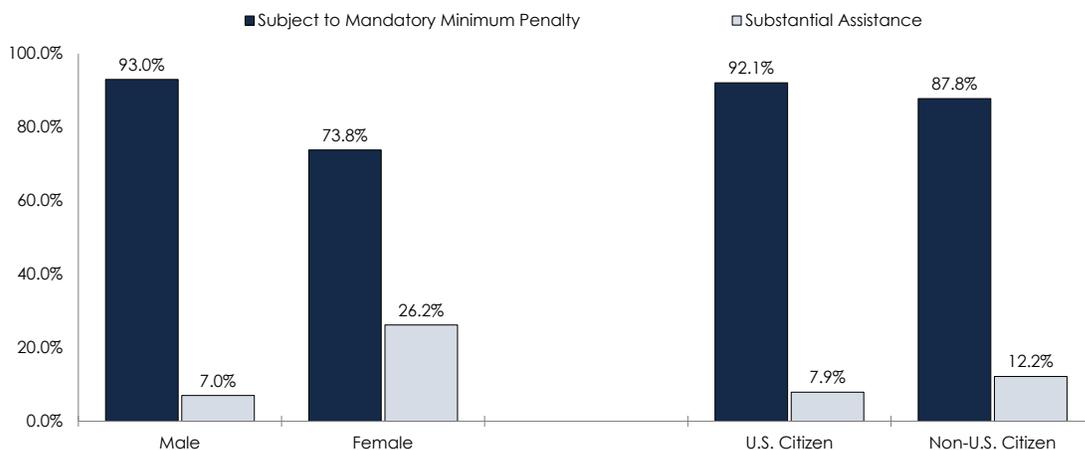
SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

(for example, 6.5% in fiscal year 2016). Hispanic offenders (45.7%) and Other Race (Non-Native American) offenders (72.7%) were also most frequently sentenced under §2G2.1, while Native American offenders were most frequently sentenced under §2A3.1 (53.3%).

Female offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty received relief from that penalty more than three times as often as male sexual abuse offenders (26.2% compared to 7.0%). Non-United States citizens obtained relief from the mandatory minimum penalty more often than United States citizens (12.2% compared to 7.9%).



**Figure 13.** Sexual Abuse Offenders Who Were Relieved of the Penalty by Gender and Citizenship  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



## Sentencing of Sexual Abuse Offenders

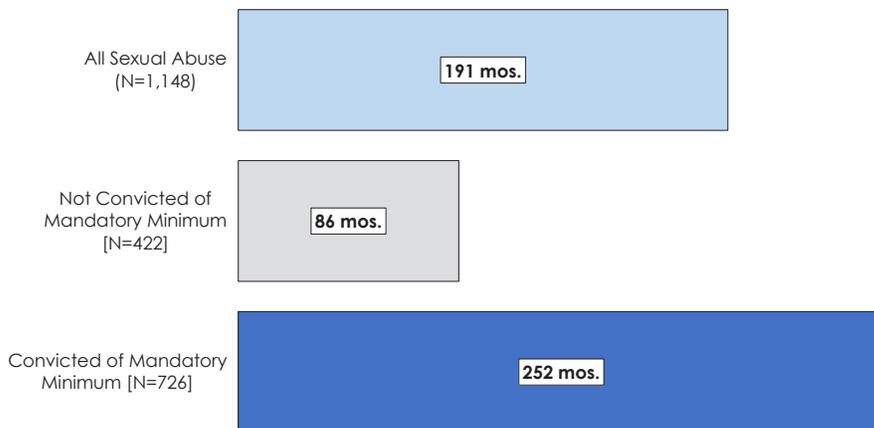
### Average Sentence Length

The Commission compared the average sentence length for all sexual abuse offenders, offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty, and offenders convicted of a sexual abuse offense not carrying a mandatory minimum penalty. For those offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty, the Commission also compared the average sentence lengths for those relieved of and subject to the mandatory minimum penalty.

In fiscal year 2016, the average sentence length for offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty was nearly three times as long as the average sentence for offenders convicted of a sexual abuse offense not carrying a mandatory minimum penalty (252 months compared to 86 months).

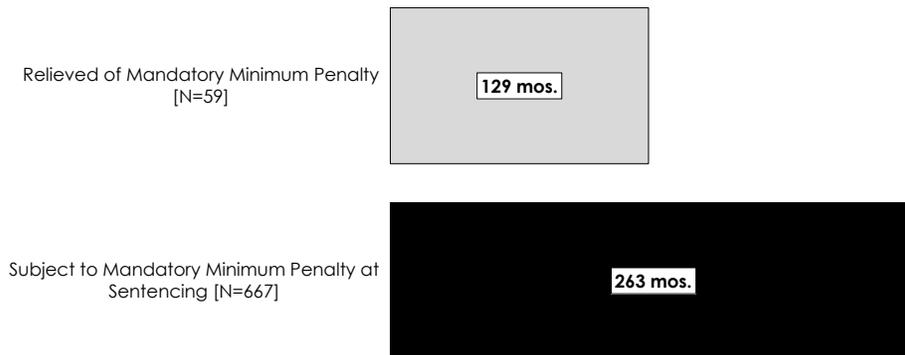
The average sentence length for those offenders who remained subject to the mandatory minimum penalty (263 months) was more than double the average sentence length for those sexual abuse offenders who received relief from the mandatory minimum penalty (129 months).

**Figure 14.** Average Sentence Length for Sexual Abuse Offenders by Mandatory Minimum Status  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Figure 15.** Average Sentence Length for Sexual Abuse Offenders by Status of Relief from the Mandatory Minimum Penalty  
*Fiscal Year 2016*



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

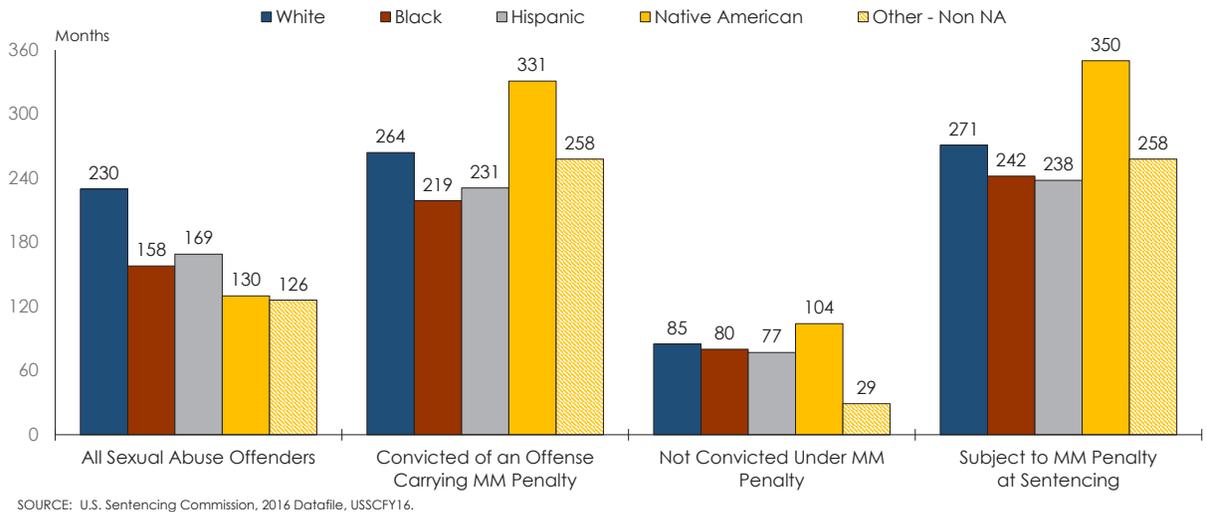
The average sentences in fiscal year 2016 were higher than they were at the time of the Commission’s 2011 *Mandatory Minimum Report*, except for those offenders receiving relief—for offenders convicted of a sexual abuse offense not carrying a mandatory minimum penalty (86 months compared to 73 months), offenders convicted of an offense carrying a mandatory minimum penalty and subject to that penalty (252 months compared to 235 months), and for those relieved of the mandatory minimum penalty at sentencing (129 months compared to 139 months).<sup>61</sup>

White sexual abuse offenders had the longest average sentence (230 months), more than five years longer than the next highest group, Hispanic offenders (169 months). Of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty with an appreciable number of defendants, White offenders had the longest average sentence (264 months), followed by Hispanic offenders (231 months), and Black offenders (219 months). While Native American offenders had the longest average sentence (331 months), there was a very low number of cases (n=15). Other Race (Non-Native American) offenders had an average sentence length of 258 months, also representing a small portion of the cases (n=11).





**Figure 16.** Average Sentence Length for Sexual Abuse Offenders and Status of Relief from the Mandatory Minimum Penalty by Race Fiscal Year 2016



A similar relationship exists between average sentence lengths by demographic group for offenders subject to the mandatory minimum penalty. Native American offenders had the longest average sentence (350 months), followed by White offenders (271 months). As noted above, however, there were few Native American offenders.

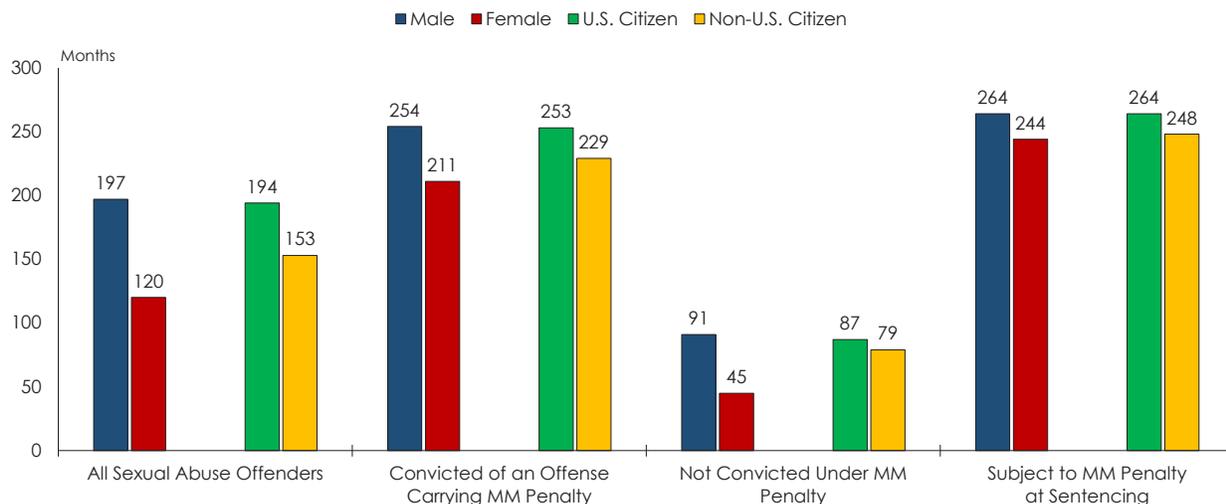
Male offenders had a longer average sentence than female offenders across all categories.

U.S. citizens had a longer average sentence than non-United States citizens across all categories.

### Sentences Relative to the Guideline Range

In fiscal year 2016, sexual abuse offenders had high rates of both government-sponsored and non-government sponsored below range sentences. Offenders receiving non-government sponsored below range sentences comprised 24.8 percent of all sexual abuse sentences, 27.4 percent of those who were convicted of a sexual abuse offense carrying a mandatory minimum penalty, and 29.8 percent of those who were subject to a mandatory minimum penalty at sentencing, compared to 21.8 percent, 21.8 percent, and 27.4 percent for all offenders, offenders convicted of an offense carrying any mandatory minimum, and offenders subject to any mandatory minimum penalty, respectively.<sup>62</sup> Offenders receiving a government sponsored below range sentence other than substantial assistance comprised 18.3 percent of all sexual abuse sentences, 16.0 percent of those who were convicted of a sexual abuse offense carrying a mandatory minimum penalty, and 17.4 percent of those who were subject to a mandatory minimum penalty at sentencing.

**Figure 17.** Average Sentence Length for Sexual Abuse Offenders and Status of Relief from the Mandatory Minimum Penalty by Gender and Citizenship Status  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

The rates of below range sentences increased from the Commission’s last report when non-government sponsored below range sentences comprised 17.8 percent, 17.3 percent, and 18.0 percent of those same categories, respectively, and government sponsored below range sentences for a reason other than substantial assistance represented

11.6 percent, 8.9 percent, and 9.3 percent of sentences in those same categories, respectively.<sup>63</sup>

There is a close relationship between the average guideline minimum sentence and the average sentence imposed for both all sexual abuse

**Table 5.** Sentence Relative to the Guideline Range for Sexual Abuse Offenders  
Fiscal Year 2016

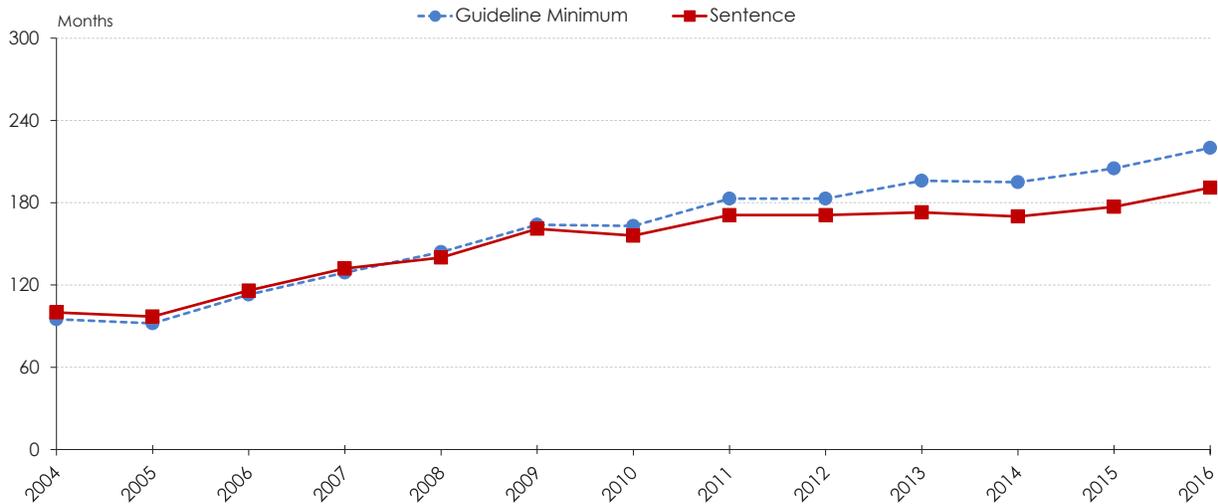
	All Sexual Abuse Offenders	Convicted of a Statute Carrying a Mandatory Minimum Penalty	Subject to Mandatory Minimum Penalty
<b>Total (# of offenders)</b>	<b>1,148</b>	<b>726</b>	<b>667</b>
<b>SENTENCE RELATIVE TO THE GUIDELINE RANGE</b>			
Within Range	43.0%	45.6%	49.6%
Above Range	5.5%	2.9%	3.2%
Substantial Assistance §5K1.1	8.4%	8.1%	0.0%
Other Government Sponsored (no §5K1.1)	18.3%	16.0%	17.4%
Non-Government Sponsored Below Range	24.8%	27.4%	29.8%

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



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**Figure 18.** Average Guideline Minimum and Sentence for Sexual Abuse Offenders  
 Fiscal Years 2004 - 2016

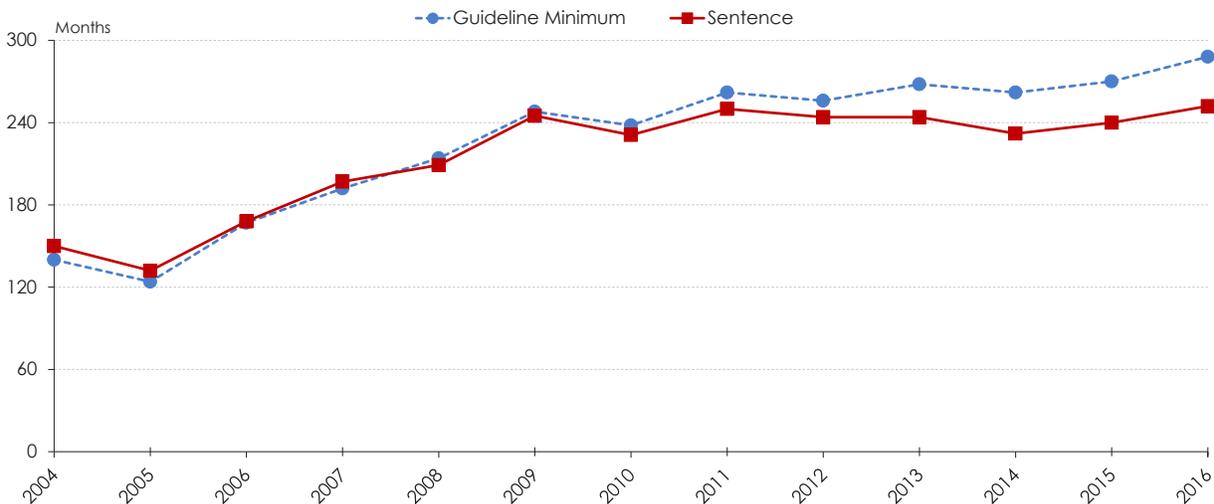


SOURCE: U.S. Sentencing Commission 2004 through 2016 Datafiles, USSCFY2004-USSCFY2016.

offenders (Figure 18) and offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty (Figure 19). However, the gap has widened over time for both groups.

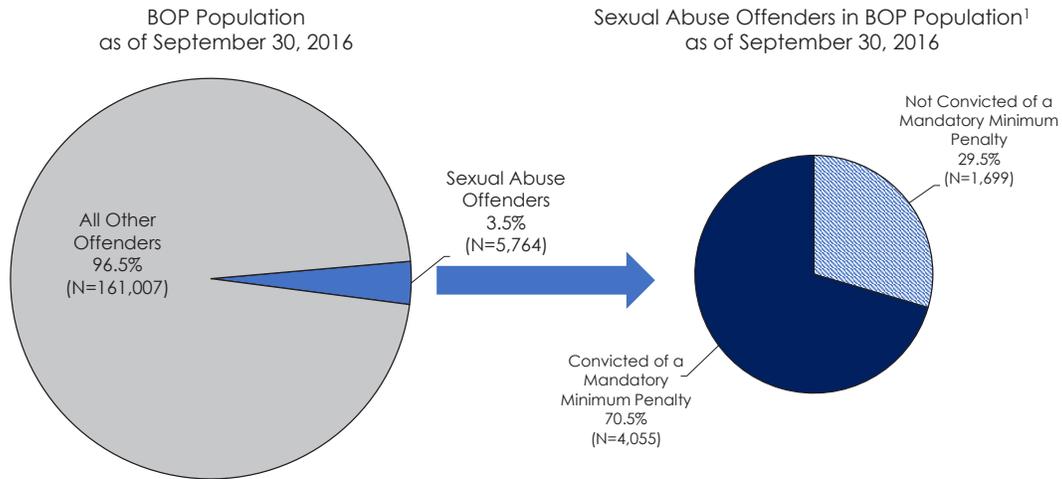
As reflected in Figure 19, the average sentence imposed in fiscal year 2016 for offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty was three years shorter than the average minimum guideline sentence, the largest difference since 2004.

**Figure 19.** Average Guideline Minimum and Sentence for Sexual Abuse Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty  
 Fiscal Years 2004 - 2016



SOURCE: U.S. Sentencing Commission 2004 through 2016 Datafiles, USSCFY2004-USSCFY2016.

**Figure 20.** Sexual Abuse Offenders in the BOP Population  
At the End of Fiscal Year 2016



<sup>1</sup> The mandatory minimum status of 10 offenders could not be determined from sentencing documentation.

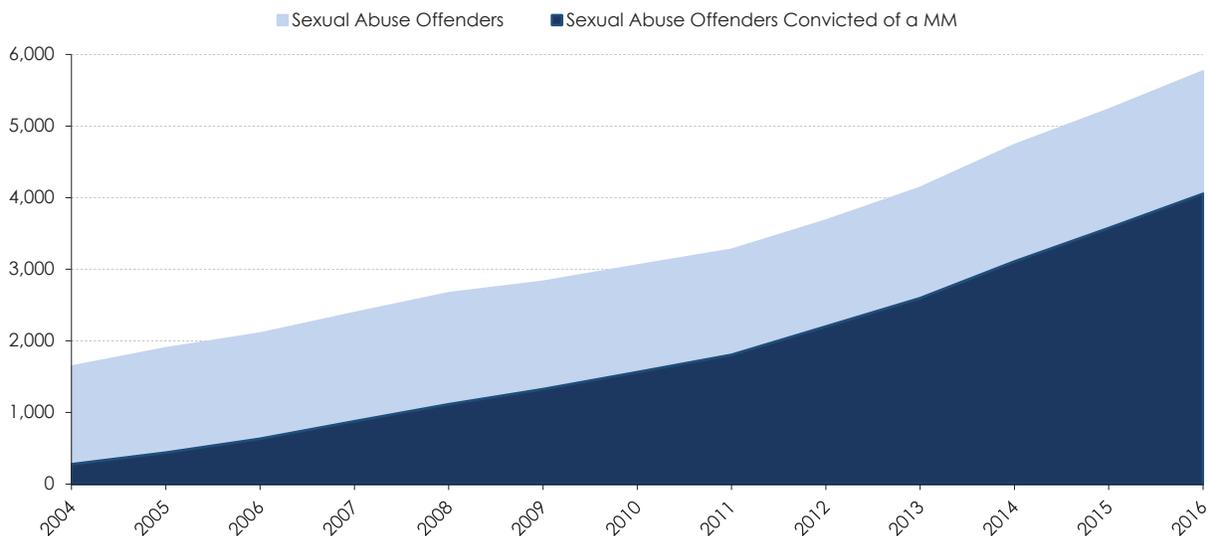
SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafile, USSCBOP.

### Sexual Abuse Offenders in the Federal Prison Population

The number of federal offenders convicted of a sexual abuse offense is a small but increasing portion of the federal prison population. Sexual abuse offenders accounted for 3.5 percent (n=5,764)

of the federal prison population as of September 30, 2016. Of sexual abuse offenders in prison, the majority (70.5%, n=4,055) were convicted of a sexual abuse offense carrying a mandatory minimum penalty, while 29.5 percent (n=1,699) were convicted of an offense not carrying a mandatory minimum penalty.<sup>64</sup>

**Figure 21.** Number of Sexual Abuse Offenders in BOP Population  
At the End Fiscal Years 2004 - 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafile, USSCBOP.





The number of sexual abuse offenders in a federal prison has steadily increased since fiscal year 2004, from 1,640 offenders to a high of 5,764 in fiscal year 2016. The number of offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty in the federal prison population has increased at a similar rate, from 276 to 4,055, during the same time period.

### Child Pornography Offenses

This section of the publication turns to the other primary category of sexual offenses in the federal system—child pornography. As previously noted, the Commission builds upon its previous study of this section by analyzing overall trends in sentencing all child pornography offenders, including a discussion of those subject to a mandatory minimum as compared to those not. This publication, however, extended the Commission

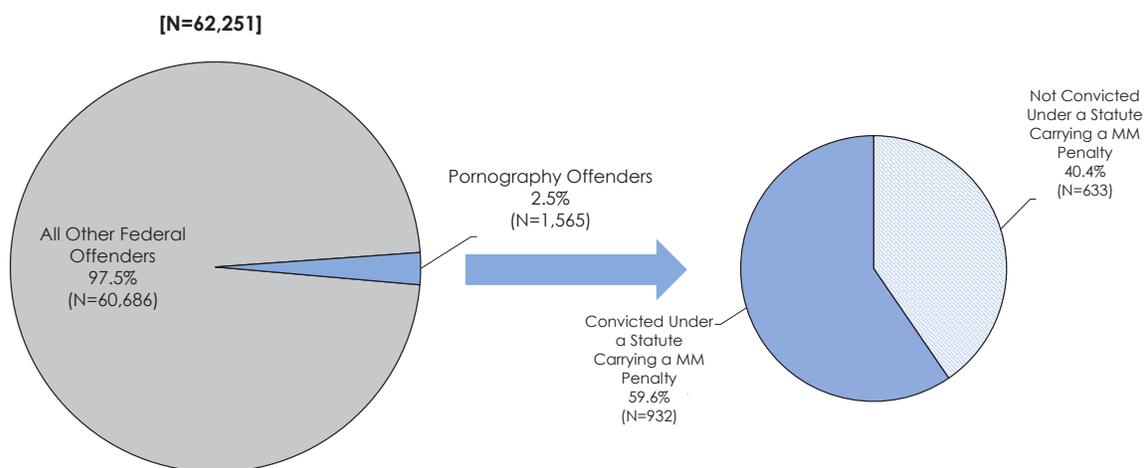
research in this area by providing additional analyses for each subtype of child pornography: possession, receipt, and distribution.<sup>65</sup> As part of this analysis, the Commission compares the sentencing data for those convicted of possession, which does not carry a mandatory minimum penalty, with the other types of child pornography offenses.

#### Prevalence of Child Pornography Offenses

##### How Often Were Offenders Charged with a Child Pornography Offense?

Of the 62,251 offenders sentenced in fiscal year 2016, only 2.5 percent (n=1,565) involved a child pornography offense.<sup>66</sup> Of those, nearly 60 percent (59.6%, n=932) were convicted of a child pornography offense carrying a mandatory minimum penalty, while 40.4 percent (n=633) were convicted of an offense not carrying a mandatory minimum penalty. Those convicted of a child

**Figure 22.** Child Pornography Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty Fiscal Year 2016



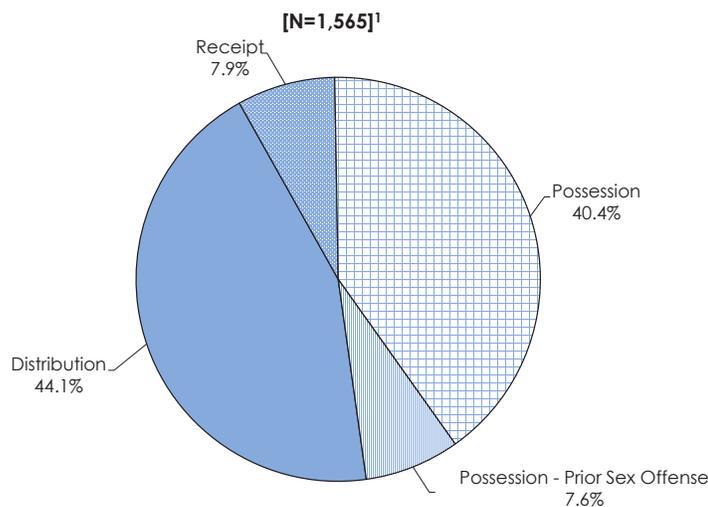
SOURCE: U.S. Sentencing Commission 2016 Datafile, USSCFY2016.

pornography offense not carrying a mandatory minimum penalty (40.4%) were all convicted of possession.

The offenders convicted of a child pornography offense carrying a mandatory minimum penalty were distributed among the three offenses carrying those penalties. As reflected in Figure 23, the largest portion, 44.1 percent (n=690) were convicted of distribution of child pornography, 7.9 percent (n=123) were convicted of receipt, and 7.6 percent (n=119) were convicted of a possession offense and had a prior conviction for an enumerated sex offense, triggering the ten-year mandatory minimum penalty.

Considering only those offenders convicted of a child pornography offense carrying a mandatory minimum penalty, nearly three-quarters were convicted of distribution (74.0%), with the remaining offenders convicted of receipt (13.2%) or possession with a prior predicate sex offense (12.8%).

**Figure 23.** Child Pornography Offenders by Offense Type  
Fiscal Year 2016



<sup>1</sup> Fifty offenders' primary guideline was cross referenced from §2G2.2 to §2G2.1 (Production of Child Pornography), and four offenders were cross referenced from §2G3.1 (Transferring Obscene Matter to a Minor) to §2G2.2. An additional two offenders were sentenced under the 1997 *Guidelines Manual*, which had lower penalties for these offenses. These 56 offenders are not included in this analysis.

<sup>2</sup> Eighty offenders were sentenced under §2G2.2 (Trafficking in Child Pornography), but were also convicted under a sexual abuse statute such as production of child pornography. These offenders are included in this analysis and also the sexual abuse analysis.

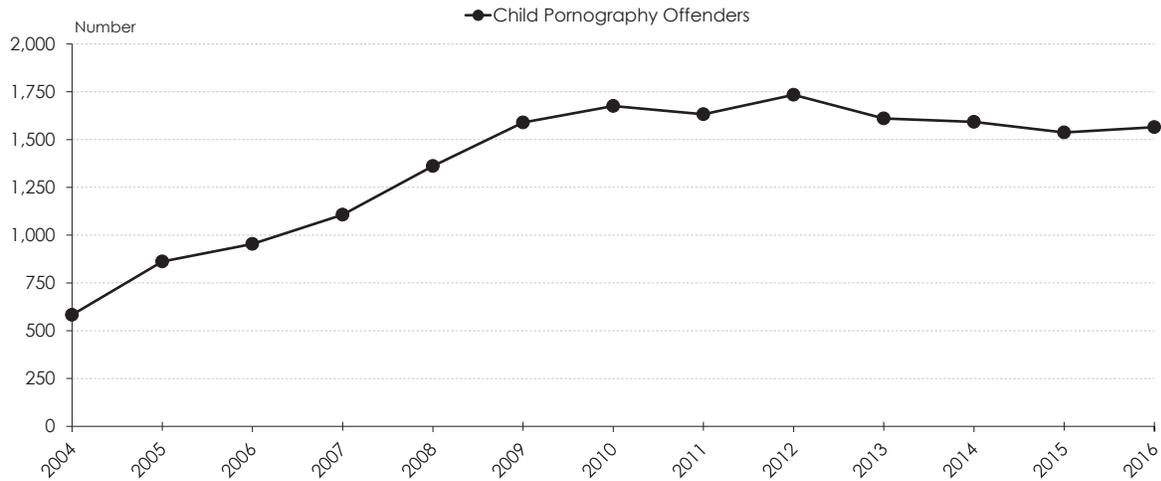
SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.





United States Sentencing Commission  
 MANDATORY MINIMUM PENALTIES FOR FEDERAL SEX OFFENSES (2019)

**Figure 24.** Number of Offenders Convicted of Child Pornography Offenses  
 Fiscal Years 2004 - 2016

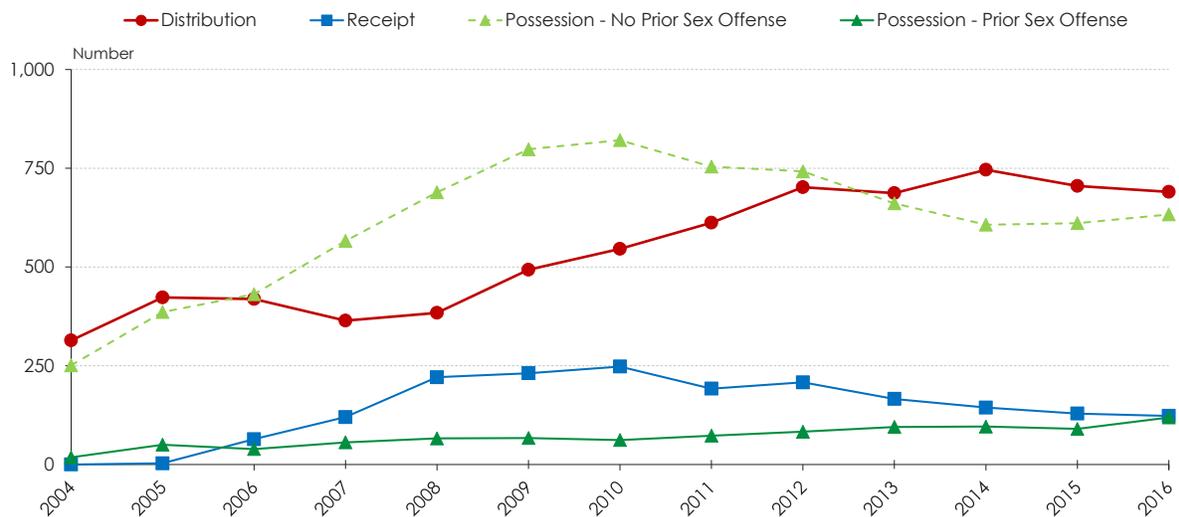


SOURCE: U.S. Sentencing Commission 2004 through 2016 Datafiles, USSCFY2004-USSCFY2016.

As reflected in Figure 24, the number of child pornography cases increased between fiscal year 2004 (n=583) and fiscal year 2010 (n=1,675). This number stabilized somewhat following the Commission’s 2011 *Mandatory Minimum Report*. It reached a high point of 1,734 in 2012 and decreased to 1,565 offenders in fiscal year 2016.

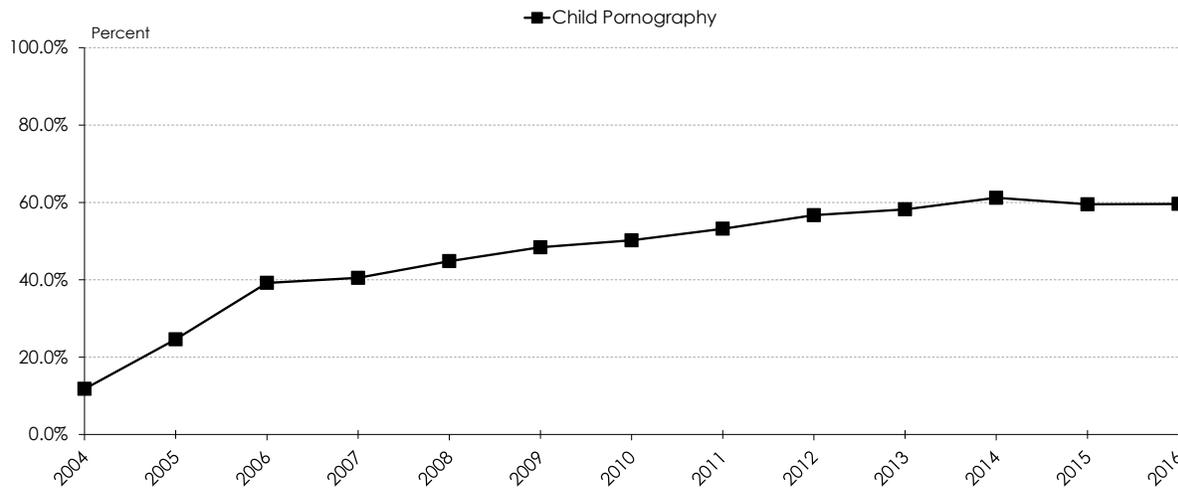
Between fiscal years 2004 and 2013, possession of child pornography was the most common child pornography offense, reaching its peak of 883 cases in fiscal year 2010. In fiscal year 2014, distribution of child pornography became the most prevalent (n=746). Receipt offenses have decreased since the Commission’s 2011 *Mandatory Minimum Report*,

**Figure 25.** Number of Child Pornography Offenders by Type of Offense  
 Fiscal Years 2004 - 2016



SOURCE: U.S. Sentencing Commission 2004 through 2016 Datafiles, USSCFY2004-USSCFY2016.

**Figure 26.** Percentage of Child Pornography Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty Fiscal Years 2004 - 2016



SOURCE: U.S. Sentencing Commission, 2004 through 2016 Datafiles, USSCFY04 – USSCFY16.

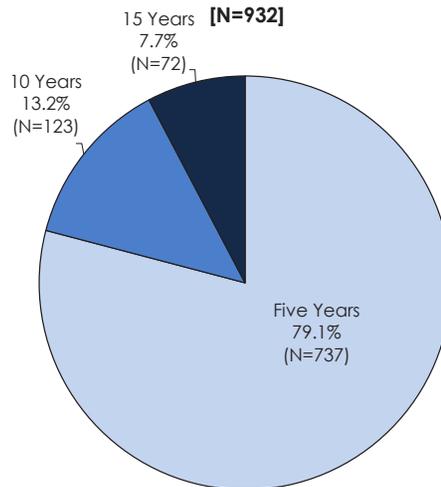
from 248 in fiscal year 2010 to 123 in fiscal year 2016, the lowest number since fiscal year 2007 (n=120). The number of offenders convicted of a possession offense who had a prior predicate sex offense has increased at a low and relatively steady rate, before reaching a high of 119 offenders in the last fiscal year.

When considering those three offense types carrying a mandatory minimum penalty—distribution, receipt, and possession with prior sex conviction—the percentage of child pornography offenders convicted of an offense carrying a mandatory minimum penalty also generally increased, from 11.8 percent in fiscal year 2004 to a high of 61.2 percent in fiscal year 2014, before leveling off to 59.6 percent in fiscal 2016.





**Figure 27.** Length of Mandatory Minimum Penalties for Child Pornography Offenders  
Fiscal Year 2016



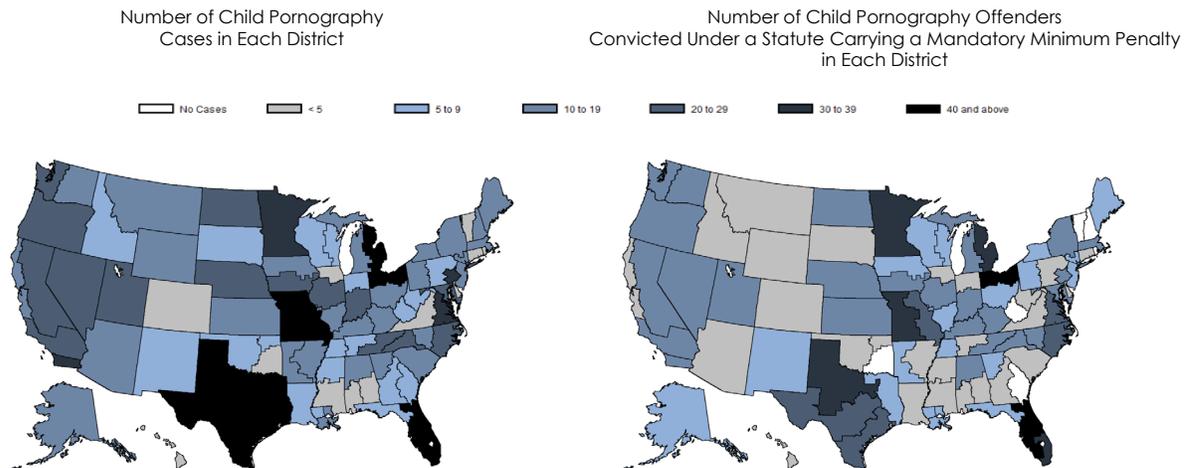
SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY 16.

### *How Severe Were Mandatory Minimum Penalties for Child Pornography Offenders?*

Child pornography offenders were convicted of offenses carrying five, ten, and 15-year mandatory minimum penalties. As noted in Section 3, receipt and distribution offenses each carry a five-year mandatory minimum penalty (and a 20-year maximum penalty), which increases to 15 years (and a 40-year maximum) for offenders with a predicate sex offense.<sup>67</sup> Possession offenses carry no mandatory minimum penalty and a maximum penalty of ten years (or 20 years if the offense involved a victim under 12 years old). If a defendant has a prior federal or state conviction for one or more enumerated sex offenses, however, the penalty range for possession increases to a mandatory minimum term of ten years and a maximum term of 20 years of imprisonment.

As reflected in Figure 27, the majority of offenders convicted of a child pornography offense carrying a mandatory minimum penalty faced a minimum penalty of five years (79.1%, n=737). This group constituted those offenders charged with either receipt or distribution with no prior sex offenses. The next largest portion (13.2%, n=123) faced a ten-year mandatory minimum penalty, which comprised those convicted of possession with a prior sex offense, followed by offenders who faced a penalty of 15 years for those convicted of distribution or receipt with such a prior (7.7%, n=72).

**Figure 28.** Geographic Distribution of Child Pornography Offenders  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

### Where Were Offenders Convicted of Child Pornography Offenses?

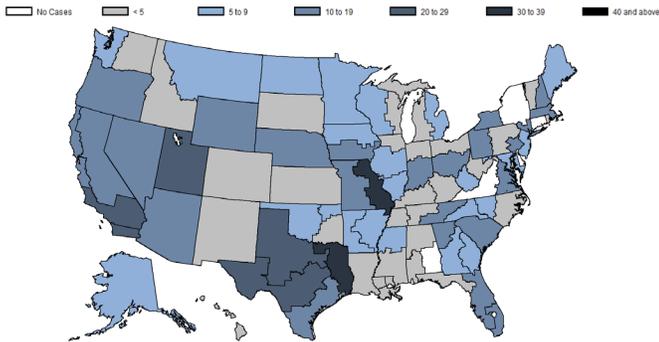
As reflected in Figure 28, the Middle District of Florida had both the most offenders convicted of child pornography offenses (n=70), as well as the most offenders convicted of a child pornography offense carrying a mandatory minimum penalty (n=57). The Western District of Texas (n=55) and the Northern District of Texas (n=48) had the next highest number of child pornography offenders, while the Northern District of Ohio (n=41) had the next most convicted of a child pornography offense carrying a mandatory minimum penalty.

Further geographic variation is seen when separately analyzing each of the three subtypes of child pornography.





**Figure 29.** Possession of Child Pornography Offenders  
 Fiscal Year 2016

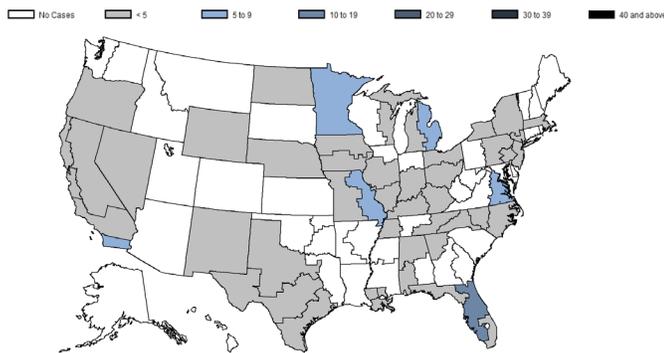


SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

The Eastern District of Texas (n=38) had the most offenders convicted of possession of child pornography, followed by the Western District of Texas (n=29), the Eastern District of Missouri (n=30), the Southern District of California (n=22) and the Northern District of Texas (n=22). Connecticut, Guam, the Northern District of New York, Delaware, the Western District of Virginia, and the Middle District of Alabama had no such cases.<sup>68</sup>

The Middle District of Florida (n=11) was the only district with more than ten offenders convicted of receipt of child pornography. Forty-four districts had no receipt cases.

**Figure 30.** Receipt of Child Pornography Offenders  
 Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

The Middle District of Florida (n=43) had the most offenders convicted of distribution of child pornography, followed by the Northern District of Ohio (n=37). Eleven districts had no such cases.

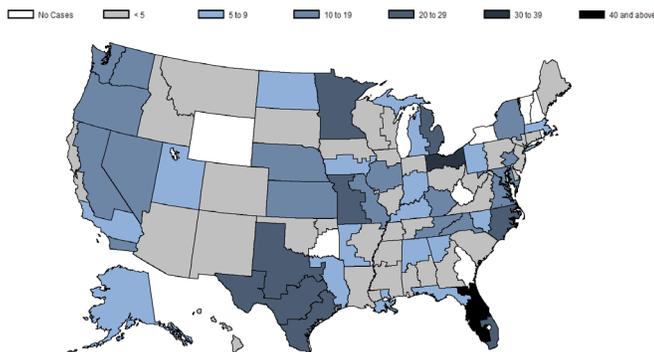
## Offender Demographics

### Race, Gender, and Citizenship

Consistent with the Commission's past analyses, White male offenders continued to make up the overwhelming majority of child pornography offenders in fiscal year 2016.

White offenders constituted over 80 percent of offenders convicted of any child pornography offense (80.9%), those convicted of a child pornography offense carrying a mandatory minimum penalty (83.0%), and those subject to that penalty at sentencing (83.2%).

**Figure 31.** Distribution of Child Pornography Offenders  
 Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

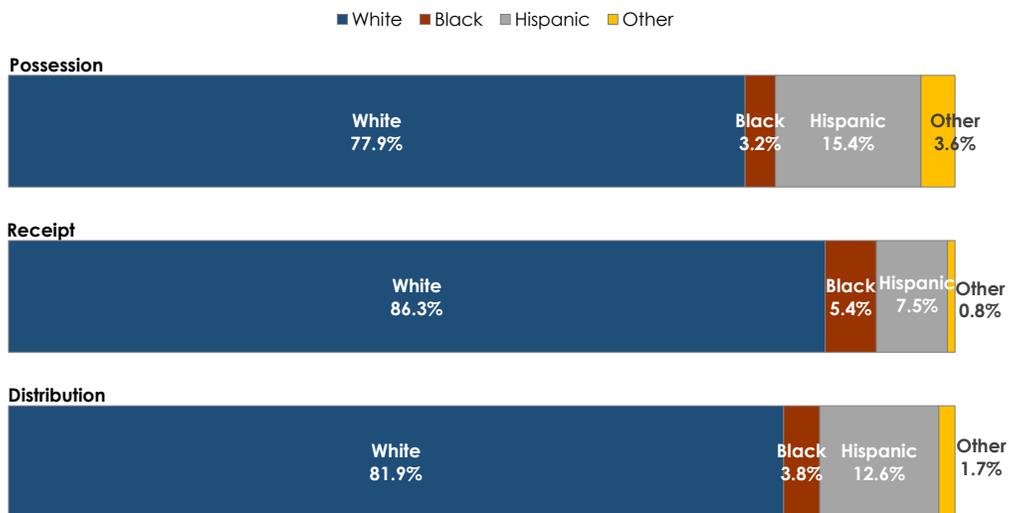
White offenders comprised larger portions of offenders convicted of receipt (86.3%) and distribution (81.9%) offenses, than they did of offenders convicted of possession offenses (77.9%), while the opposite was true for Hispanic offenders (7.5%, 12.6%, and 15.4%, respectively).<sup>69</sup>

**Figure 32.** Race of Child Pornography Offenders  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Figure 33.** Race of Child Pornography Offenders by Type of Offense  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.





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**Table 6.** Gender and Citizenship of Child Pornography Offenders  
 Fiscal Year 2016

	All Child Pornography Offenders	Convicted of an Offense Carrying a Mandatory Minimum Penalty	Subject to Mandatory Minimum Penalty
<b>Total Number of Offenders</b>	<b>1,565</b>	<b>932</b>	<b>911</b>
<b>Male</b>	99.7%	99.8%	99.9%
<b>Female</b>	0.3%	0.2%	0.1%
<b>U.S. Citizen</b>	96.2%	96.2%	96.2%
<b>Non-U.S. Citizen</b>	3.8%	3.8%	3.8%

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

In fiscal year 2016, nearly all child pornography offenders were male (99.7%), as were those offenders convicted of a child pornography offense carrying a mandatory minimum penalty (99.8%).<sup>70</sup>

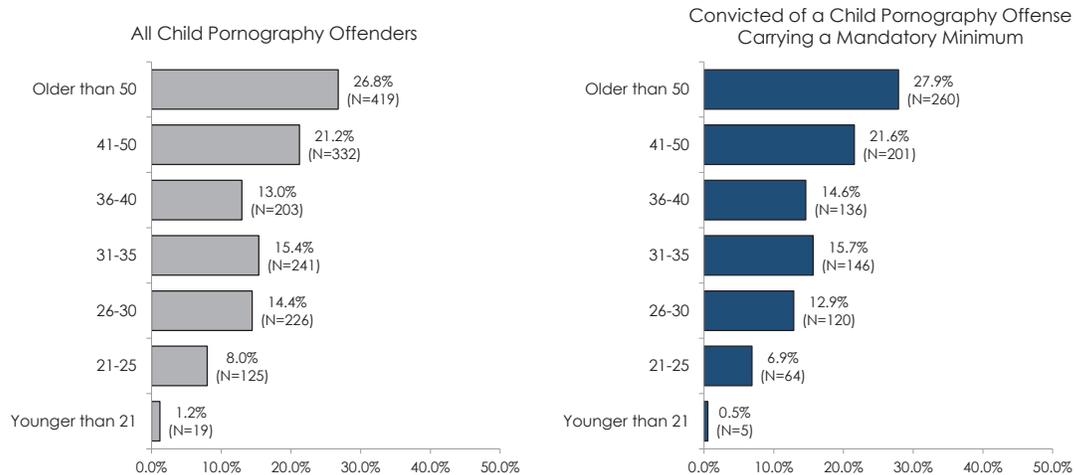
Nearly all child pornography offenders were United States citizens (96.2%), as were as those convicted of a child pornography offense carrying a mandatory minimum sentence (96.2%).

Age

In fiscal year 2016, the average age of all child pornography offenders and child pornography offenders convicted of an offense carrying a

mandatory minimum penalty was 42, five years older than the average age of federal offenders and federal offenders convicted of a mandatory minimum overall (37). Nearly half of all child pornography offenders were age 41 or older, with 26.8 percent older than 50 (n=419) and 21.2 percent ages 41 to 50 (n=332). Less than ten percent of child pornography offenders were 25 or younger, with the remaining offenders fairly evenly distributed throughout age brackets 26 to 30, 31 to 35, and 36 to 40. The same relationship exists for offenders who were convicted of a child pornography offense carrying a mandatory minimum penalty. Offenders older than 50 were most prevalent (27.9%, n=260), followed by those ages 41 to 50 (21.6%, n=201).

**Figure 34.** Age of Child Pornography Offenders  
 Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Table 7.** Criminal History of Child Pornography Offenders  
Fiscal Year 2016

	All Child Pornography Offenders	Convicted of an Offense Carrying a Mandatory Minimum Penalty	Subject to Mandatory Minimum Penalty
<b>Total Number of Offenders</b>	<b>1,565</b>	<b>932</b>	<b>911</b>
<b>CRIMINAL HISTORY CATEGORY</b>			
I	78.3%	70.2%	70.6%
II	9.1%	12.0%	12.0%
III	7.5%	10.4%	10.2%
IV	2.6%	3.9%	3.7%
V	1.4%	2.0%	2.0%
VI	1.2%	1.5%	1.5%

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

## Criminal History

The majority of all child pornography offenders (78.3%) and offenders convicted of a child pornography offense carrying a mandatory minimum penalty (70.2%) were in Criminal History Category I. The remaining offenders were distributed fairly evenly throughout criminal history categories. Compared to all child pornography offenders, a smaller percentage of offenders convicted of child pornography offenses carrying a mandatory minimum penalty were in Criminal History Category I, with slightly larger percentages in each of the higher categories.

The proportion of offenders in Criminal History Category I is considerably larger for offenders convicted of a child pornography offense carrying a mandatory minimum penalty than it is for offenders convicted of any offense carrying a mandatory minimum penalty (70.2% compared to 45.7%).<sup>71</sup>

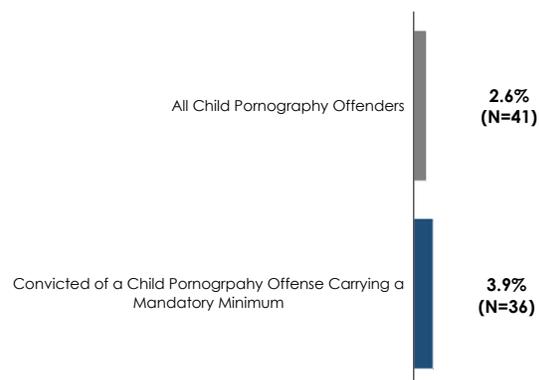
## Plea and Trial Rates

In fiscal year 2016, child pornography offenders proceeded to trial at a similar rate to the rate for all offenders (2.6% compared to 2.7% of all offenders).<sup>72</sup> The Commission also analyzed the trial rates for child pornography offenders by offense type. Offenders convicted of a distribution

offense were most likely to proceed to trial (4.1%), followed by offenders convicted of a receipt offense (3.3%). Child pornography offenders convicted of an offense carrying a mandatory minimum penalty proceeded to trial at a lower rate than offenders convicted of any offense carrying a mandatory minimum penalty (5.2%).<sup>73</sup> Offenders convicted of possession offenses were even less likely to proceed to trial (1.2%).

Child pornography offenders proceeded to trial at a lower rate (3.9%) in fiscal year 2016 than they had at the time of the Commission's 2011 *Mandatory Minimum Report* (6.4%).<sup>74</sup>

**Figure 35.** Trial Rate of Child Pornography Offenders  
Fiscal Year 2016

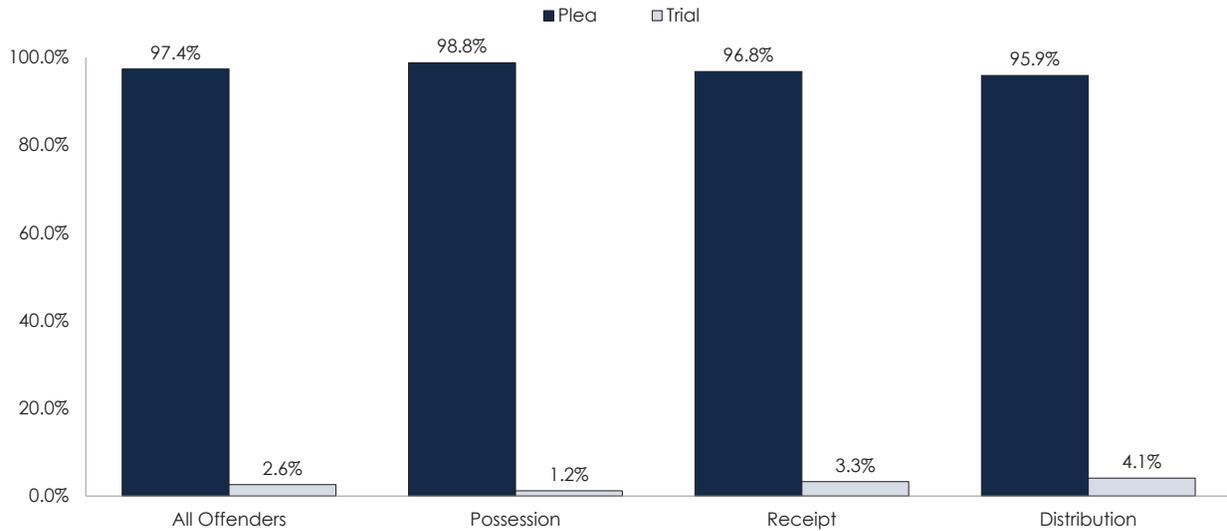


SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.





**Figure 36.** Plea and Trial Rate of Child Pornography Offenders by the Type of Offense  
Fiscal Year 2016



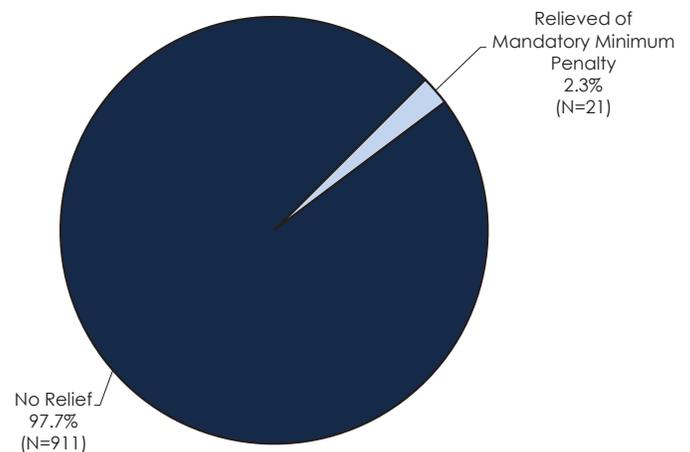
SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

### Relief from Mandatory Minimum Penalties

A very small percentage (2.3%) of child pornography offenders were relieved of the mandatory minimum penalty at sentencing pursuant to 18 U.S.C. § 3553(e) for rendering substantial assistance to the government. Child pornography offenders were relieved of the mandatory minimum penalty at a substantially lower rate than offenders convicted of any offense carrying a mandatory minimum penalty (38.7%).<sup>75</sup>

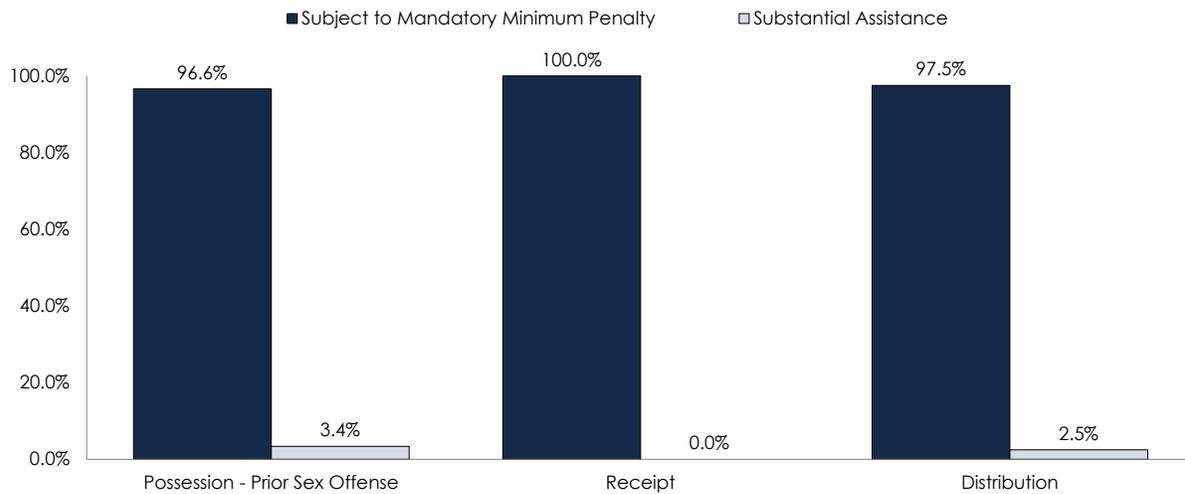
There was little difference in relief rates based on the type of offense. Possession offenders who faced a mandatory minimum penalty as a result of a prior conviction for an enumerated sex offense received relief at the highest rate (3.4%), followed by distribution offenders (2.5%). No receipt offenders received relief.

**Figure 37.** Child Pornography Offenders Relieved of Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Figure 38.** Child Pornography Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty Who Were Relieved of the Penalty by Type of Pornography Offense  
Fiscal Year 2016

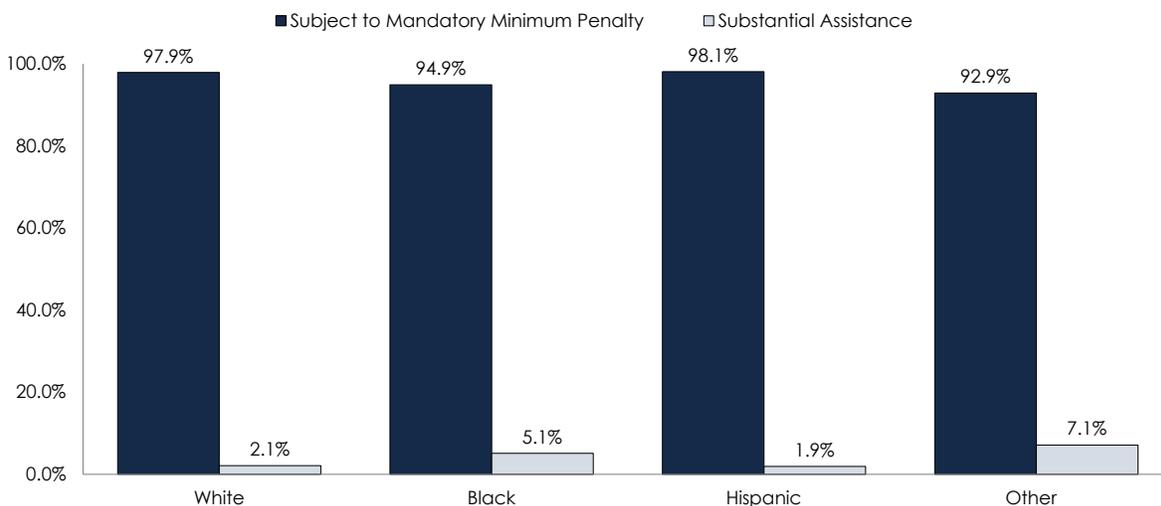


• Possession offenders (no prior sex offense) are not subject to mandatory minimum penalties at sentencing. These statistics reflect the rate for all possession of child pornography offenders.  
SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

In fiscal year 2016, Other Race offenders were the most likely to be relieved of a mandatory minimum penalty at sentencing (7.1%), followed by Black offenders (5.1%). These groups, however, comprised relatively small portions of child pornography offenders generally and those

convicted of a child pornography offense carrying a mandatory minimum penalty. White offenders, who comprised the largest portions of both groups, respectively (80.9% and 83.0%), received relief in 2.1 percent of cases.

**Figure 39.** Child Pornography Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty Who Were Relieved of the Penalty by Race of Offender  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



## Sentencing of Child Pornography Offenders

### Average Sentence Length

The Commission compared the average sentence length for all child pornography offenders and for child pornography offenders based on offense type. For those offenders convicted of a child pornography offense carrying a mandatory minimum penalty, the Commission also compared the average sentence lengths for those relieved of and subject to the mandatory minimum penalty.

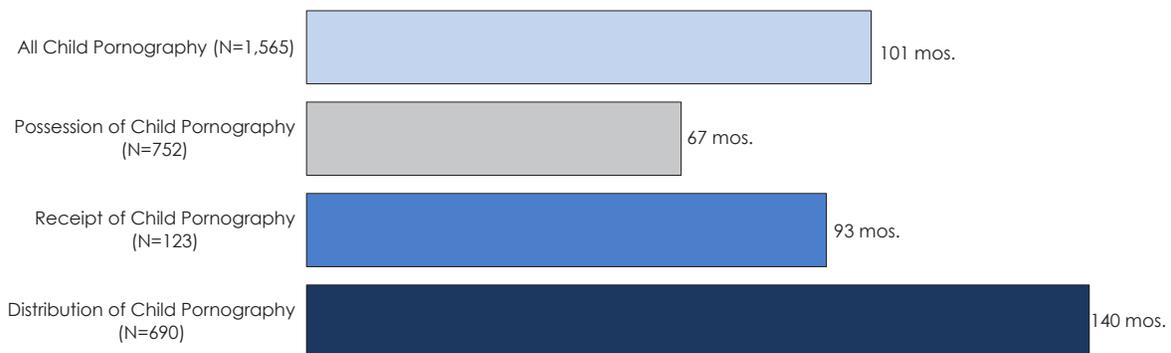
As reflected in Figure 40, the average sentence length for all child pornography offenders was 101 months in fiscal year 2016. Offenders convicted of distribution offenses had the longest average sentence (140 months), followed by receipt offenders (93 months), and possession offenders (67 months).

Among all child pornography offenders, the average sentence lengths for White, Black, and Hispanic offenders were all within three months of one another (with a low of 100 months for Black

offenders and a high of 103 months for Hispanic offenders). While the average sentence length was shorter for Other Race offenders (91 months), only 37 Other Race were offenders included in this analysis.

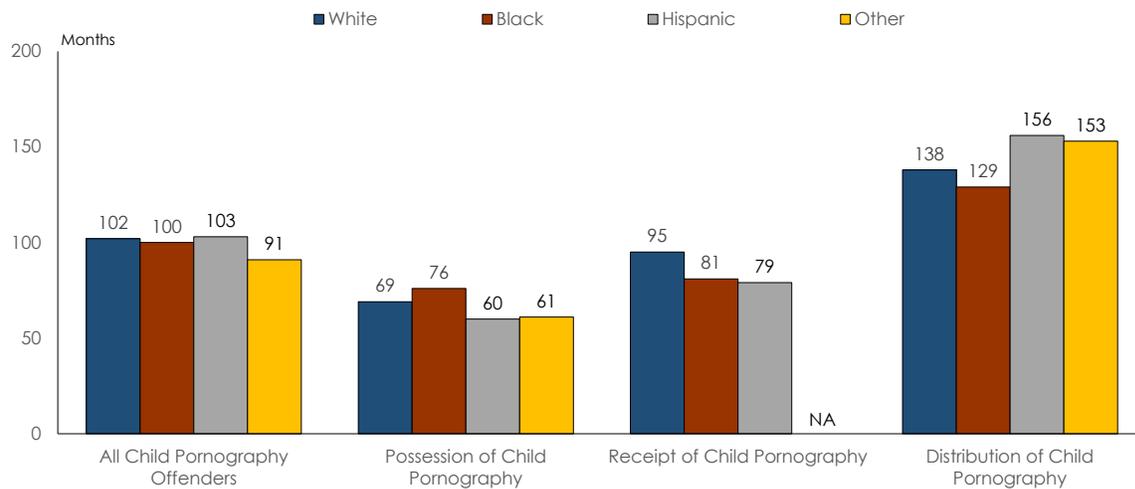
Average sentence lengths varied by demographic group for the different offense types. For possession offenses, Black offenders had the longest average sentence (76 months), followed by White offenders (69 months). This relationship was reversed for receipt offenses (95 months for White offenders compared to 81 months for Black offenders). Hispanic offenders had a shorter average sentence for both offense types, as did Other Race possession offenders.<sup>76</sup> For distribution offenses, Black offenders had the shortest average sentence (129 months), followed by White offenders (138 months). Hispanic offenders had the longest average sentence (156 months), closely followed by Other Race offenders (153 months). Hispanic and Other Race offenders, however, comprised very small portions of offenders convicted of distribution offenses, only 12.6 and 1.7 percent of offenders, respectively. For offenders convicted

**Figure 40.** Average Sentence Length for All Child Pornography Offenders and by Type of Child Pornography Offense Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Figure 41.** Average Sentence Length for Child Pornography Offenders by Type of Pornography Offense and Race  
Fiscal Year 2016



of a possession offense (with a prior sex offense conviction), Hispanic offenders had the longest average sentence length (146 months), followed by Black offenders (140 months), and White offenders (135 months).<sup>77</sup>

Male possession offenders (68 months) had a longer average sentence than female possession offenders (33 months). There were no female receipt or distribution offenders.

United States citizen receipt offenders (94 months) had a longer average sentence than Non-United States citizen receipt offenders (65 months), while the opposite was true for distribution offenders (139 months compared to 153 months). The average sentence lengths were more similar for possession offenses—67 months for United States citizens and 58 months for Non-United States citizens.

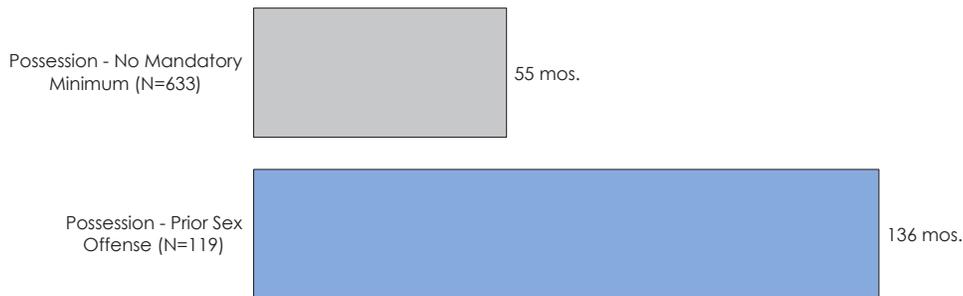
**Table 8.** Average Sentence Length for Child Pornography Offenders by Gender and Citizenship Status  
Fiscal Year 2016

	All Child Pornography Offenders	Possession of Child Pornography	Receipt of Child Pornography	Distribution of Child Pornography
<b>AVERAGE SENTENCE (Months)</b>				
<b>Male</b>	102	68	93	140
<b>Female</b>	77	33	NA	NA
<b>U.S. Citizen</b>	101	67	94	139
<b>Non-U.S. Citizen</b>	106	58	65	153

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



**Figure 42.** Average Sentence Length for Possession of Child Pornography Offenders  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

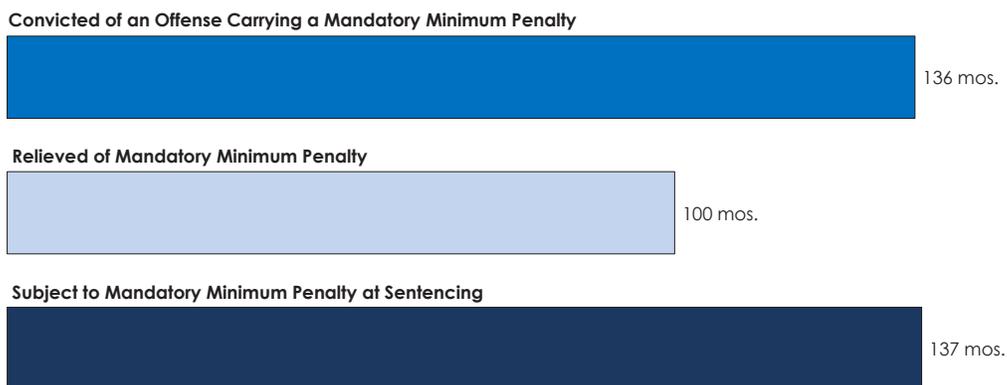
### Sentencing of Possession Offenses

Not surprisingly, the average sentence length for offenders convicted of possession offenses (without a prior sex offense), which do not carry a mandatory minimum penalty, was substantially shorter (55 months) than for those possession offenders who faced a ten-year mandatory minimum penalty because of a prior sex offense conviction (136 months).

As shown in Figure 43, offenders convicted of a possession offense (with a prior sex offense conviction) and relieved of the mandatory minimum penalty had an average sentence of 100 months, 37

months shorter than for those subject to that penalty (137 months). Relief had a noticeable impact on sentence length for the few offenders who received it. However, because so few offenders received relief, there is little difference in the overall average sentence length and the average sentence length for those offenders who remained subject to the penalty. The average sentence for offenders convicted of a possession offense without a mandatory minimum penalty was also shorter than the average sentence for offenders convicted of a possession offense (with a prior sex offense) who were relieved of the mandatory minimum penalty (55 months compared to 100 months).

**Figure 43.** Impact of Relief on Average Sentence Length of Child Pornography Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

**Table 9.** Average Sentence Length for Possession of Child Pornography Offenders Carrying a Mandatory Minimum Penalty by Race  
Fiscal Year 2016

	Convicted of an Offense Carrying a Mandatory Minimum Penalty	Subject to Mandatory Minimum Penalty
<b>AVERAGE SENTENCE (Months)</b>		
<b>Possession of Child Pornography</b>		
White	135	137
Black	140	140
Hispanic	146	146
Other	NA	NA

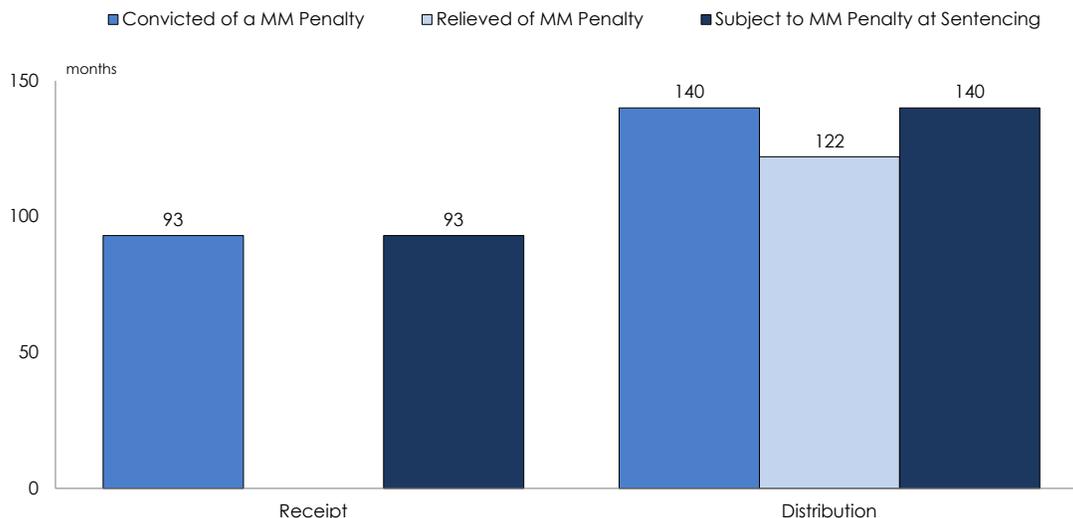
SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

### Sentencing of Receipt & Distribution Offenses

Although there was a noticeable impact on sentence length for those offenders relieved of the possession mandatory minimum penalty, few offenders received relief. As a result, the average sentence length for offenders who remained subject to the mandatory minimum penalty by demographic group mirrors the average sentence lengths for offenders convicted of those offenses.

Offenders convicted of a distribution offense had an average sentence nearly four years longer than offenders convicted of receipt offenses (140 months compared to 93 months). Those distribution offenders relieved of the mandatory minimum penalty had an average sentence length of 122 months, 18 months shorter than for those subject to the penalty (140 months). No receipt offenders received relief from the mandatory minimum penalty.

**Figure 44.** Impact of Relief on Average Sentence Length of Child Pornography Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty  
Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



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**Table 10.** Average Sentence Length for Receipt and Distribution of Child Pornography Offenders by Race  
 Fiscal Year 2016

	Convicted of an Offense Carrying a Mandatory Minimum Penalty	Subject to Mandatory Minimum Penalty
AVERAGE SENTENCE (Months)		
<b>Receipt of Child Pornography</b>		
White	95	95
Black	81	81
Hispanic	79	79
Other	NA	NA
<b>Distribution of Child Pornography</b>		
White	138	138
Black	129	133
Hispanic	156	157
Other	153	156

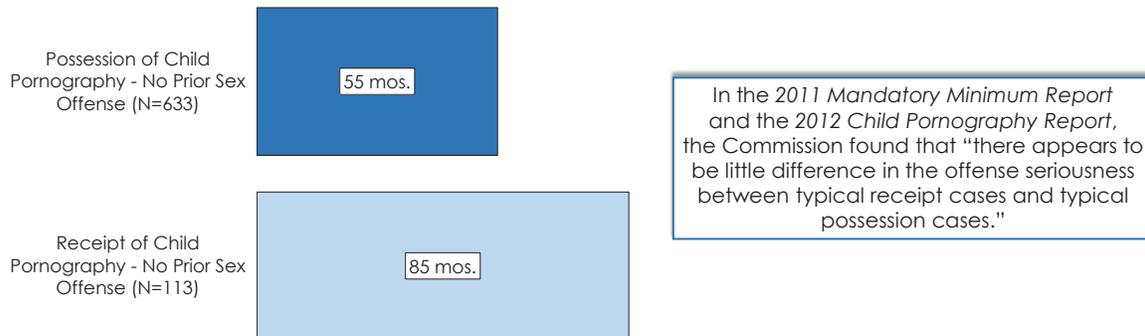
SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

Again, as with possession offenses, due to the small number of offenders relieved of the mandatory minimum penalty, the average sentence length for offenders who remained subject to the mandatory minimum penalty by demographic group mirrors the average sentence lengths for offenders convicted of those offenses.

*Charging Decisions Continue to Impact Sentence Length for Possession and Receipt Offenders*

As noted above, past Commission analysis has demonstrated that there is little difference in the underlying conduct of offenders charged with possession offenses, compared to the conduct of offenders charged with receipt offenses.<sup>78</sup> However, as demonstrated in Figure 45, whether

**Figure 45.** Average Sentence Length for Possession and Receipt of Child Pornography Offenders  
 Fiscal Year 2016



SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

the defendant is charged with possession or receipt has a substantial effect on the sentence length. The Commission compared the average sentence for offenders convicted of a possession offense (without a prior sex offense conviction), who did not face any mandatory minimum penalty, with the average sentence for offenders convicted of a receipt offense, who faced a five-year mandatory minimum penalty. Receipt offenders with a prior sex offense conviction, who faced a 15-year mandatory minimum, were excluded from this analysis. The average sentence for the receipt offenders (without a prior sex offense conviction) was two and a half years longer (85 months) than the average sentence length for possession offenders without a prior sex offense conviction (55 months).

### Sentences Relative to the Guideline Range

Consistent with the Commission’s past analysis of sentencing for child pornography offenses, in fiscal year 2016, most child pornography offenders were sentenced below the guideline range as a result of either a non-government sponsored departure or variance (48.8%) or a government sponsored departure or variance other than

substantial assistance (20.8%). In fiscal year 2016, only 26.8 percent of all child pornography offenders were sentenced within the guideline range, compared to 46.6 percent of offenders overall and 41.4 percent of offenders convicted of an offense carrying any mandatory minimum penalty.<sup>79</sup>

More than half of both receipt (51.2%) and distribution (53.2%) offenders received a non-government sponsored below range sentence. This is higher than the rate for possession offenders (44.3%). Possession offenders, however, received a government sponsored departure or variance other than substantial assistance at the highest rate (23.9%). Child pornography offenders, regardless of offense type, were sentenced within the guideline range at a rate lower than all offenders and all offenders convicted of any offense carrying a mandatory minimum penalty (46.6% and 41.4%, respectively).<sup>80</sup>



**Table 11.** Sentence Relative to the Guideline Range for Child Pornography Offenders by Type of Pornography Offense  
Fiscal Year 2016

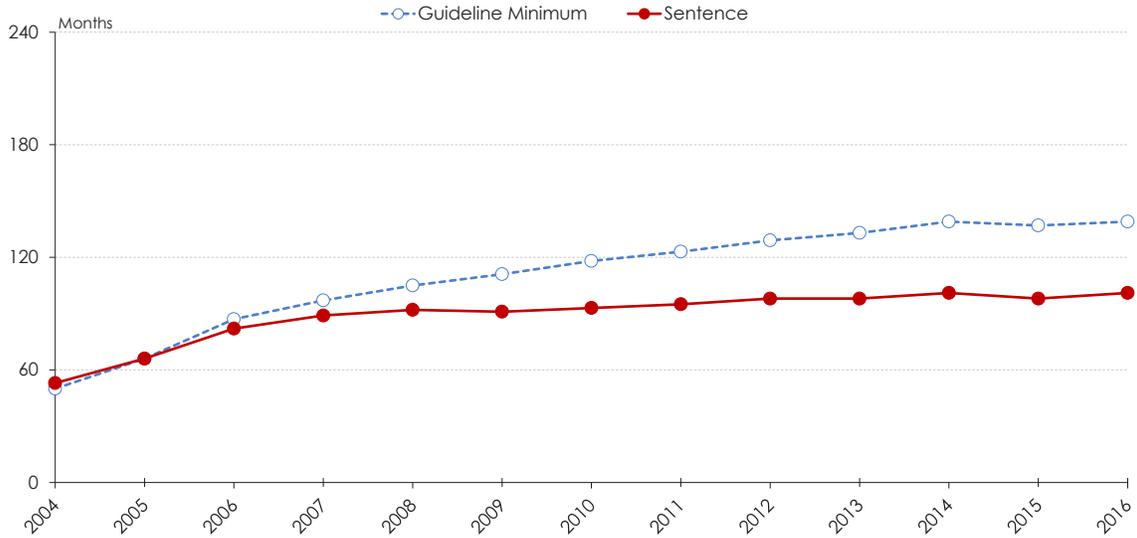
	All Child Pornography Offenders	Possession of Child Pornography	Receipt of Child Pornography	Distribution of Child Pornography
<b>Total (# of offenders)</b>	<b>1,565</b>	<b>752</b>	<b>123</b>	<b>690</b>
<b>SENTENCE RELATIVE TO THE GUIDELINE RANGE</b>				
Within Range	26.8%	28.3%	27.6%	24.9%
Above Range	1.9%	2.1%	4.9%	1.2%
Substantial Assistance §5K1.1	1.7%	1.3%	0.0%	2.5%
Other Government Sponsored (no §5K1.1)	20.8%	23.9%	16.3%	18.3%
Non-Government Sponsored Below Range	48.8%	44.3%	51.2%	53.2%

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



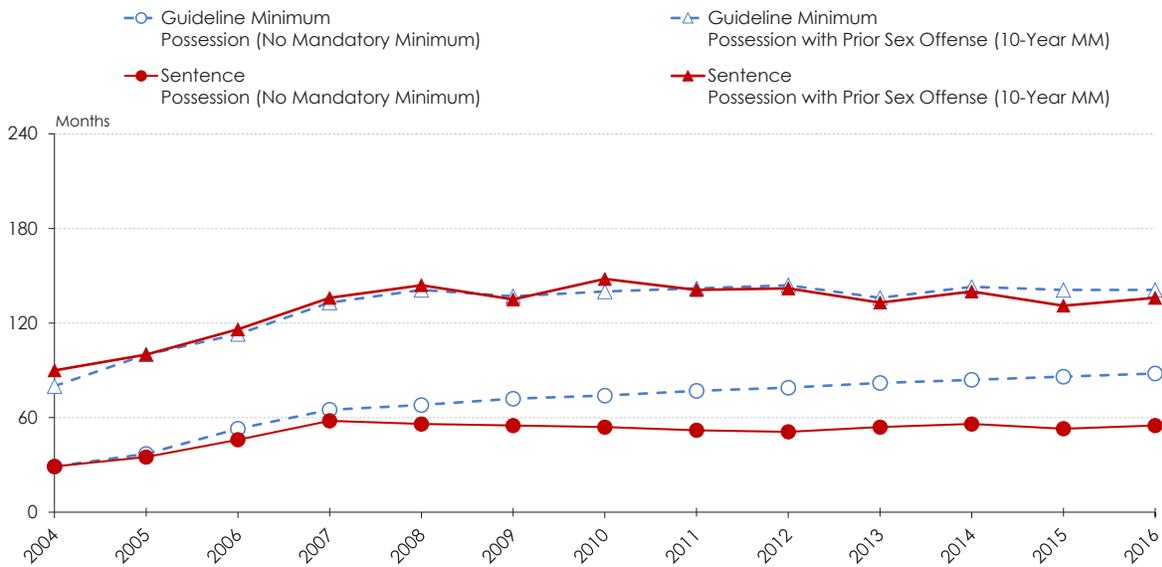
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**Figure 46.** Average Guideline Minimum and Sentence for Child Pornography Offenders  
 Fiscal Years 2004 - 2016



SOURCE: U.S. Sentencing Commission 2004 through 2016 Datafiles, USSCFY2004-USSCFY2016.

**Figure 47.** Average Guideline Minimum and Sentence for Possession of Child Pornography Offenses  
 Fiscal Years 2004 - 2016



SOURCE: U.S. Sentencing Commission 2004 through 2016 Datafiles, USSCFY2004-USSCFY2016.

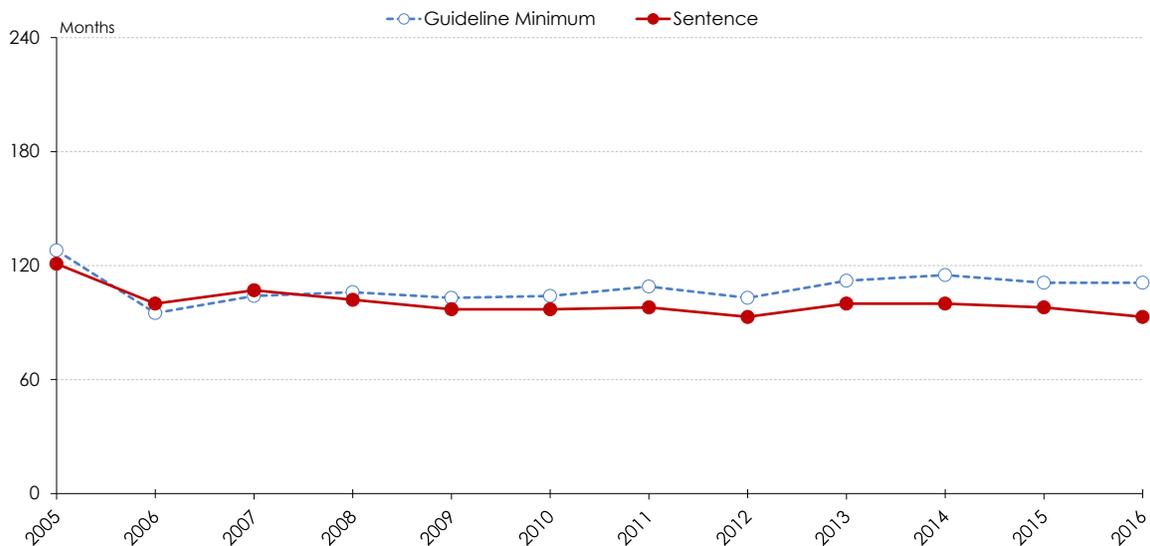
The average guideline minimum for child pornography offenders has increased from an average of 50 months in fiscal year 2004 to 139 months in fiscal year 2016. While the average sentence increased substantially between fiscal years 2004 and 2008 (from 53 months to 92 months), it has remained relatively stable since, increasing less dramatically to 101 months in fiscal year 2016.

Similarly, for those possession offenders not facing a mandatory minimum penalty, the average sentence and the average guideline minimum increased at a similar rate between fiscal years 2004 and 2007. From 2008 on, however, the guideline minimum sentence continued to steadily increase while the average sentence decreased and then remained relatively stable. In fiscal year 2016, the average sentence imposed was 55 months, 33 months less than the average guideline minimum sentence (88 months).

In contrast, for possession offenders facing a mandatory minimum as the result of a prior sex offense, the average sentence and the guideline minimum sentence were never more than ten months apart. In fiscal year 2016, the average guideline minimum sentence (141 months) was five months longer than the average sentence (136 months).

As seen in Figure 48, the average guideline minimum for offenders convicted of receipt of child pornography has remained relatively stable, from an average of 128 months in fiscal year 2005 to 111 months in fiscal year 2016. While also relatively stable and close to the guideline minimum, the average sentence decreased from 121 months in fiscal year 2005 to 93 months in fiscal year 2016.

**Figure 48.** Average Guideline Minimum and Sentence for Receipt of Child Pornography Offenses  
Fiscal Years 2005 - 2016<sup>1</sup>



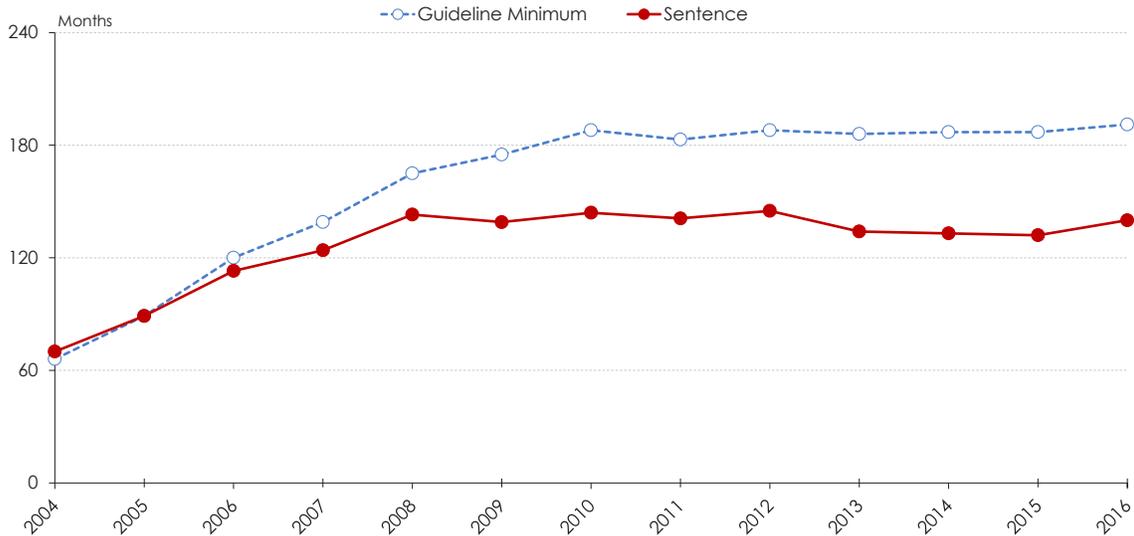
<sup>1</sup> There were no receipt cases in fiscal year 2004.

SOURCE: U.S. Sentencing Commission 2005 through 2016 Datafiles, USSCFY2005-USSCFY2016.





**Figure 49.** Average Guideline Minimum and Sentence for Distribution of Child Pornography Offenses  
Fiscal Years 2004 - 2016



SOURCE: U.S. Sentencing Commission 2004 through 2016 Datafiles, USSCFY2004-USSCFY2016.

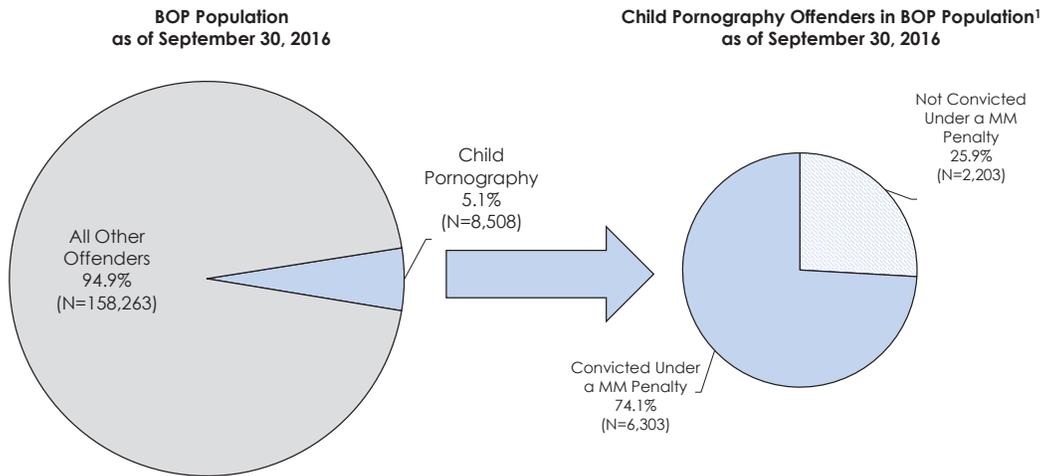
A different trend emerges, however, when considering distribution offenses. As reflected in Figure 49, the average guideline minimum has diverged further from the average sentence imposed. The average guideline minimum for offenders convicted of distribution of child pornography increased from an average of 66 months in fiscal year 2004 to 191 months in fiscal year 2016. The average sentence also increased, from 70 months in fiscal year 2004 to 143 months in 2008. It has been relatively stable since, reaching a high of 145 months in fiscal year 2012, and decreasing to 140 months in fiscal year 2016.

### Child Pornography Offenders in the Federal Prison Population

The number of federal offenders convicted of child pornography offenses is a small but increasing portion of the federal prison population. Child pornography offenders accounted for 5.1 percent (n=8,508) of the federal prison population as of September 30, 2016. Of child pornography offenders in prison, the majority (74.1%, n=6,303) were convicted of a child pornography offense carrying a mandatory minimum penalty, while 25.9 percent (n=2,203) were convicted of an offense not carrying a mandatory minimum penalty.<sup>81</sup>

The number of child pornography offenders in federal prison has steadily increased since fiscal year 2004, from 1,259 offenders to a high of 8,508 in fiscal year 2016. The number of offenders convicted of a child pornography offense carrying a mandatory minimum penalty in the federal prison population has increased at a similar rate, from 118 to 6,303 during the same time period.

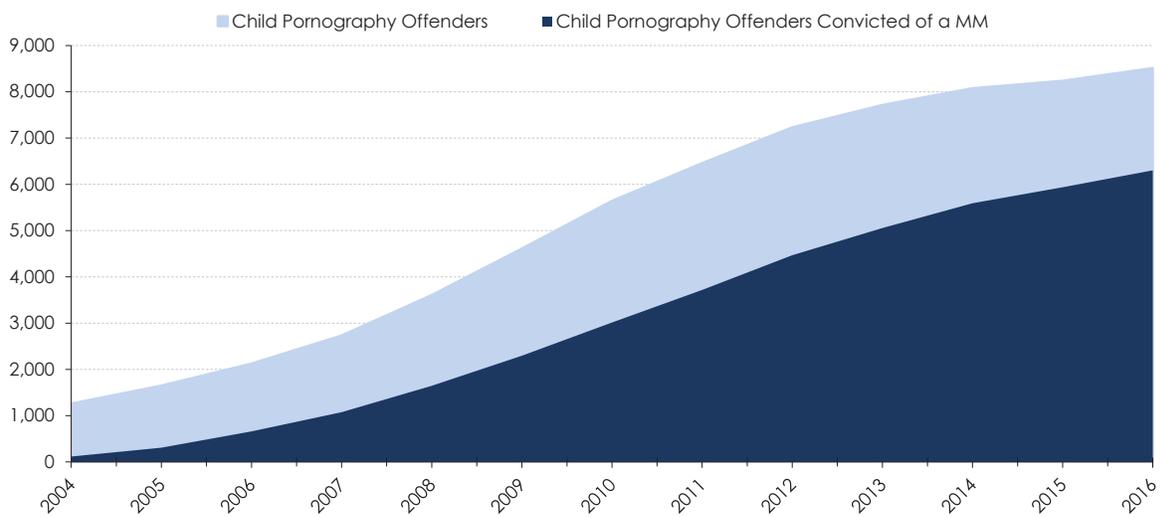
**Figure 50.** Child Pornography Offenders in Federal Prison  
At the End of Fiscal Year 2016



<sup>1</sup> The mandatory minimum status of two offenders could not be determined from sentencing documentation.

SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafile, USSCBOP.

**Figure 51.** Number of Child Pornography Offenders in Federal Prison  
At the End of Fiscal Years 2004 - 2016



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 2016 Datafile, USSCBOP.





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5 Conclusion



## Conclusion

Since the Commission's 2011 *Mandatory Minimum Report*, offenders convicted of a sex offense continued to represent a small portion of the federal caseload overall and of cases involving a mandatory minimum penalty. However, the number of offenders convicted of a sex offense generally, and the percentage convicted of a sex offense carrying a mandatory minimum penalty, both increased since the Commission's last report. Sex offenses increased from 3.2 percent (n=2,317) to 4.2 percent (n=2,633) of the federal caseload between fiscal years 2010 and 2016. The percentage of sexual abuse offenders and child pornography offenders convicted of an offense carrying a mandatory minimum penalty each also increased over the same time period (from 52.6% to 63.2%, and from 50.2% to 59.6%, respectively).

At the time that it published the 2011 *Mandatory Minimum Report*, the Commission concluded that further study was needed before it could offer specific recommendations with respect to sex offenses. However, it noted that a preliminary review suggested that "the mandatory minimum penalties for certain child pornography offenses and the resulting guidelines sentencing ranges may be excessively severe and as a result are being applied inconsistently."<sup>82</sup>

The Commission specifically focused on the mandatory minimum penalties for receipt of child pornography. It determined that there was little difference in the offense seriousness between typical receipt cases, which require a five-year mandatory minimum penalty, and typical possession cases, which require none. In its 2012 *Report to the Congress: Federal Child Pornography Offenses*,<sup>83</sup> the Commission again concluded that the majority of offenders convicted of possession offenses as

the most serious offense of conviction engaged in knowing receipt or distribution conduct. It thus expressed concern regarding "unwarranted sentencing disparities resulting from inconsistent application of the mandatory minimum penalty for receipt offenses" and recommended that "Congress align the statutory penalties for receipt and possession."<sup>84</sup>

The Commission's concern regarding mandatory minimum penalties for receipt offenses continued to be supported by fiscal year 2016 data. In fiscal year 2016, the mandatory minimum penalty for receipt was inconsistently applied. Only 7.9 percent of offenders were charged with receipt, compared to 40.4 percent of offenders who were charged with possession (and had no prior sex offense). And, even though the conduct involved in the offenses is not meaningfully distinguishable, the sentencing differences were substantial. Receipt offenders (without a prior sex offense) were sentenced to terms two and a half years longer than offenders convicted of possession (without a prior sex offense) (85 months compared to 55 months).



Endnotes



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1 U.S. SENTENCING COMM’N, OVERVIEW OF MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (July 2017) [hereinafter 2017 OVERVIEW PUBLICATION], *available at* [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170711\\_Mand-Min.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170711_Mand-Min.pdf).

2 U.S. SENTENCING COMM’N, MANDATORY MINIMUM PENALTIES FOR DRUG OFFENSES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (Oct. 2017), *available at* [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025\\_Drug-Mand-Min.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025_Drug-Mand-Min.pdf); U.S. SENTENCING COMM’N, MANDATORY MINIMUM PENALTIES FOR FIREARMS OFFENSES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (Mar. 2018) [hereinafter 2018 FIREARMS PUBLICATION], *available at* [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315\\_Firearms-Mand-Min.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315_Firearms-Mand-Min.pdf); APPLICATION AND IMPACT OF 21 U.S.C. § 851: ENHANCED PENALTIES FOR FEDERAL DRUG TRAFFICKING OFFENDERS (July 2018), *available at* [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180712\\_851-Mand-Min.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180712_851-Mand-Min.pdf); U.S. SENTENCING COMM’N, MANDATORY MINIMUM PENALTIES FOR IDENTITY THEFT OFFENDERS IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (Sept. 2018), *available at* [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180924\\_ID-Theft-Mand-Min.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180924_ID-Theft-Mand-Min.pdf).

3 U.S. SENTENCING COMM’N, 2011 REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM [hereinafter 2011 MANDATORY MINIMUM REPORT], *available at* <https://www.ussc.gov/research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-system>.

4 A similar bifurcation of federal sex offenses appears in the Commission’s Sourcebook of Federal Sentencing Statistics. *See* U.S. SENTENCING COMM’N, 2016 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS [hereinafter 2016 SOURCEBOOK] S-14 (Table 3); *see also id.* at 167–69 (definitions of “sexual abuse” and “child pornography” as “primary offense categories”).

5 A similar bifurcation of federal sex offenses appears in the Commission’s Sourcebook of Federal Sentencing Statistics. *See supra* note 4.

6 Offenses involving a failure to register under the Sex Offender Registration and Notification Act are sentenced under United States Sentencing Commission, *Guidelines Manual*, §2A3.5 (Failure to Register as a Sex Offender) and §2A3.6 (Aggravated Offenses Relating to Registration as a Sex Offender).

7 Such obscenity offenses are sentenced under USSG §§2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names) and 2G3.2 (Obscene Telephone Communications for a Commercial Purpose; Broadcasting Obscene Material).

8 *See, e.g.*, 18 U.S.C. §§ 1591 (sex trafficking of children or by fraud, force, or coercion), 2251 & 2251A (offenses related to production of child pornography).

9 Advertising for the exchange of completed child pornography in violation of section 2251(d)(1)(A) also is subject to a 15- year mandatory minimum penalty, but it is punished under USSG §2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor) rather than USSG §2G2.1. *See* USSG App. A. Conversely, advertising that seeks “participation” in the production of child pornography, in violation of section 2251(d)(1)(B), which also is subject to a 15- year mandatory minimum penalty, is governed by USSG §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production). *See* USSG App. A. The latter is deemed a “sexual abuse” offense for purposes of this chapter, while the former is deemed a “child pornography” offense.

If a defendant has a prior federal or state conviction for one of the enumerated sex offenses, the penalty range for production or advertising increases to a mandatory minimum term of 25 years and a maximum term of 50 years of imprisonment. If a defendant has a prior federal or state conviction for two or more enumerated sex offenses, the penalty range for production increases to a mandatory minimum term of 35 years and a maximum term of life imprisonment. *See* 18 U.S.C. §§ 2251(e) & 2260(c)(1).

10 Section 3559(e) is a rarely used statute. Only one offender was sentenced to life imprisonment under that statute in fiscal year 2016, the same number as in fiscal year 2010.

11 *See, e.g.*, 18 U.S.C. § 2242 (providing for a fine and/or term of imprisonment of “any term of years or for life” for sexual abuse of an adult victim); 18 U.S.C. § 2422(a) (providing for a term of imprisonment of “not more than 20 years” for causing an adult to travel in interstate or foreign commerce in order to engage in prostitution or other illegal sexual activity). *But see* 18 U.S.C. § 1591(b)(1) (15-year mandatory minimum penalty for sex trafficking by force, fraud, or coercion for victim of any age).

12 The relevant provisions are USSG §§2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts), 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts), 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor), 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor), and 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

13 *See* 18 U.S.C. § 2256(8) (defining “child pornography” as “any visual depiction” of a minor “engaging in sexually explicit conduct”). “Sexually explicit conduct” encompasses various sexual conduct, including sexual intercourse, oral and anal sex, masturbation, bestiality, and the “lascivious exhibition of the genitals or pubic area.” 18 U.S.C. § 2256(2). Federal statutes outlawing obscenity—primarily 18 U.S.C. §§ 1462, 1466, and





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1466A—also prohibit certain acts related to photographic and non-photographic visual representations of minors engaged in “sexually explicit conduct.” Such offenses, if they involve the obscene depiction of minors rather than adults, are subject to the guidelines’ child pornography provisions rather than the obscenity provisions. *See, e.g.*, USSG §2G3.1(c).

14 Sections 2252 and 2252A use not only the term “distribute” but also the term “sell,” thus, broadly encompassing any type of transmission of child pornography to another, both electronic and non-electronic distribution and both commercial or non-commercial distribution. *See, e.g.*, 18 U.S.C. §§ 2252(a)(2), (a)(3) & 2252A(a)(2), (a)(4)(B). In addition, §§ 2252, 2252A and 2260(b) each prohibit the possession of child pornography with the intent to distribute it (in different circumstances). *See* 18 U.S.C. §§ 2252(a)(3)(B), 2252A(a)(4)(B), & 2260(b). The sentencing guideline provisions related to child pornography use the terms “trafficking” and “distribution” interchangeably. *See, e.g.*, USSC §2G2.2(b)(1). This report will use the term “distribute” to refer to all types of distribution (as well as possession with the intent to distribute). *Cf.* 21 U.S.C. § 841(a)(2) (treating distribution of drugs and possession with intent to distribute drugs as equivalents).

15 *See* 18 U.S.C. §§ 2251(e), 2252(b), 2252A(b), and 2260(c). Section 2252 concerns child pornography depicting an actual minor, while section 2252A also captures child pornography depicting a computer-generated image “indistinguishable from that of” an actual minor “engaging in sexually explicit conduct” or modified “to appear that an identifiable minor is engaging in sexually explicit conduct.” 18 U.S.C. §§ 2252A and 2256(8)(B) & (C).

16 *See* *United States v. Holston*, 343 F.3d 83, 85–86 (2d Cir. 2003); *see also* *United States v. Williams*, 553 U.S. 285, 296 (2008) (“[I]n much Internet file sharing of child pornography each participant makes his files available for free to other participants.”).

17 *See, e.g.*, *United States v. Meyers*, 355 F.3d 1040, 1042 (7th Cir. 2004).

18 *See, e.g.*, *United States v. Ehle*, 640 F.3d 689, 698 (6th Cir. 2011).

19 *See* USSG App. A (referring violations of 18 U.S.C. § 1466A to USSG §2G2.2).

20 18 U.S.C. §§ 2252(b)(1), 2252A(b)(1), 2260(c)(2).

21 18 U.S.C. §§ 2252(b)(1), 2252A(b)(1), 2260(c)(2).

22 18 U.S.C. §§ 2252(b)(2) & 2252A(b)(2).

23 18 U.S.C. §§ 2252(b)(2) & 2252A(b)(2). Such enumerated sex offenses include prior convictions for sex trafficking of children, obscenity offenses, sexual abuse of adults or children, and child pornography offenses. *See* 18 U.S.C. § 2252(b)(2).

24 18 U.S.C. § 1466A(a)(2) (providing that violations of this subsection are subject to the penalties at 18 U.S.C. § 2252A(b)(1)).

25 18 U.S.C. § 1466A(b)(2) (providing that violations of this subsection are subject to the penalties at 18 U.S.C. § 2252A(b)(2)).

26 18 U.S.C. § 1466A(a)(2) & (b)(2) (providing that violations of these subsections are subject to the penalties at 18 U.S.C. § 2252A(b)(1) and (b)(2)).

27 Certain other guidelines contain cross-references to §2G2.2 if relevant conduct in the case included possession, transportation, receipt, or distribution of child pornography, including §2G3.1(c) (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names). The four offenders sentenced in fiscal year 2016 who cross-referenced from §2G3.1 to §2G2.2 were not included in the analyses in this publication.

28 *See* 2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 300 (quoting U.S. SENTENCING COMM’N, THE HISTORY OF THE CHILD PORNOGRAPHY GUIDELINES, at 6 (2009)).

29 *Id.*

30 *See* 18 U.S.C. § 3553(e) (“Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant’s substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.”).

31 *See* USSG §5K1.1.

32 *See* *Melendez v. United States*, 518 U.S. 120 (1996).

33 2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 365–67.

34 *Id.* at 365.

35 *Id.*

36 *Id.* at 366.





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37 U.S. SENTENCING COMM’N, REPORT TO THE CONGRESS: FEDERAL CHILD PORNOGRAPHY OFFENSES (2012) [hereinafter 2012 CHILD PORNOGRAPHY REPORT], *available at* [https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Full\\_Report\\_to\\_Congress.pdf](https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Full_Report_to_Congress.pdf).

38 *Id.* at 147–48.

39 *Id.* at 147-48, 329.

40 In fiscal year 2016, the Commission’s datafile included 67,742 cases and, of those cases, the Commission received complete guideline application information and sufficient documentation for analysis in the 62,251 cases considered for this publication. *See* 2017 OVERVIEW PUBLICATION, *supra* note 1, at 28. The methodology used in this publication, with respect to records collection and data analysis, is described in detail in the 2017 *Overview Publication*, *supra* note 1, at 28.

41 *Id.* at 29.

42 2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 300.

43 These 1,148 offenders were either convicted of a sexual abuse offense carrying a mandatory minimum penalty or were sentenced under a sentencing guideline referenced to sexual abuse offenses. The latter are defined as offenders convicted of offenses whose primary guidelines were §§2A3.1, 2A3.2, 2A3.3, 2A3.4, 2G1.1, 2G1.3, and 2G2.1. Eighty offenders were convicted of production and distribution of child pornography. These 80 offenders are included in both the sexual abuse and the child pornography analysis.

44 The Commission used 2004 as the earliest point for the analysis in the publication because statutory penalties and relevant guidelines were significantly increased by the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (“PROTECT”) Act of 2003, Pub. L. No. 108–21, 117 Stat. 650 (2003). In the PROTECT Act, Congress directly amended the guidelines by increasing the number of sentencing enhancements in the child pornography sentencing guidelines and by limiting sentencing judges’ ability to depart below the then mandatory guideline ranges in child pornography cases. The PROTECT Act also created a new five-year statutory mandatory minimum penalty for receipt, transportation, and distribution offenses, raised the statutory mandatory minimum penalty for production offenses (from ten to 15 years), and raised the statutory maximum penalties for all production and non-production offenses. *See* 2012 CHILD PORNOGRAPHY REPORT, *supra* note 37, at 3–6 (discussing impact of the PROTECT Act).

45 Eighty of these offenders were convicted of production and distribution of child pornography. These 80 offenders are included in both the sexual abuse and the child pornography analysis.

46 Offenders may be convicted under more than one statute. Thus, the total percentage represented in Table 1 is greater than 100 percent.

47 The primary sentencing guideline for offenders convicted of a sexual abuse offense carrying a mandatory minimum penalty was §2G2.2 (Distribution of Child Pornography) for 80 offenders, §2A1.1 (First Degree Murder) for one offender, and §2A4.1 (Kidnapping) for one offender. These offenders are not included in Table 2 but are included in all other analysis.

Additionally, three offenders had a primary guideline of §2G2.6 (Child Exploitation Enterprises). These cases are not necessarily sexual abuse in nature and are not included in the analysis for this report. All three of these offenders were convicted of a statute carrying a mandatory minimum penalty.

48 A complete distribution by circuit and district is provided in Appendix A.

49 2017 OVERVIEW PUBLICATION, *supra* note 1, at 37.

50 *See* 2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 302.

51 *Id.*

52 18 U.S.C. § 13 (Laws of States adopted for areas within Federal jurisdiction) (“Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.”); 18 U.S.C. § 1152 (Laws governing) (Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.).

53 Female offenders were most commonly sentenced under §2G1.3 (49.5%), followed by §2G2.1 (23.7%). For offenses carrying a mandatory minimum penalty, female offenders were mostly sentenced under §2G2.1 (50.0%).

54 *See* 2017 OVERVIEW PUBLICATION, *supra* note 1, at 38 & Table 3.

55 U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

56 *See id.*

57 2017 OVERVIEW PUBLICATION, *supra* note 1, at 39.





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58 2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 308.

59 The “Other Race (Non-Native American)” category includes offenders of Asian and other origin. For sexual abuse offenders in fiscal year 2016, the “Other Race” category consists of 2.0% Asian (n=23) and 0.3% other origin (n=3).

60 U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

61 2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 309.

62 *See* 2017 OVERVIEW PUBLICATION, *supra* note 1, at 46.

63 2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 312.

64 The mandatory minimum status of ten offenders could not be determined from the sentencing documentation.

65 For purposes of this publication child pornography offenders were defined as those convicted of offenses whose primary sentencing guideline was §§2G2.2 or 2G2.4. While some cases are still sentenced under §2G2.4, even following its deletion from the *Guidelines Manual* in 2004, no cases were sentenced under this guideline in fiscal year 2016.

These offenses were then further categorized by offense type as follows: offenders with a Base Offense Level of 18 and no mandatory minimum penalty were classified as “possession (no prior)” offenders; offenders with a Base Offense Level of 18 and a mandatory minimum penalty of ten years were classified as “possession (prior sex offense)” offenders; offenders with a Base Offense Level of 22 who received the 2-level downward adjustment under §2G2.2(b)(1) were classified as “receipt” offenders; and offenders with a Base Offense Level of 22 who did not receive the downward adjustment were classified as “distribution” offenders.

66 Fifty offenders’ primary guideline was cross-referenced from §2G2.2 to §2G2.1 (Production of Child Pornography), and four offenders were cross-referenced from §2G3.1 (Transferring Obscene Matter to a Minor) to §2G2.2. An additional two offenders were sentenced under the 1997 *Guidelines Manual*, which had lower penalties for these offenses than the current manual. These 56 offenders are excluded from this analysis.

Eighty offenders were sentenced for distribution of child pornography but were also convicted of a sexual abuse statute. These offenders are included in this analysis as well as the sexual abuse analysis.

67 *See infra* Section 3 for a more detailed description of the federal child pornography statutes and penalties.

68 A complete distribution by circuit and district is provided at Appendix B.

69 The “Other Race” category includes offenders of Asian, Native American, and other origin. For child pornography offenders in fiscal year 2016, the “Other Race” category consists of 1.3% Asian (n=21), 0.8% Native American (n=13), and 0.2% other origin (n=3).

70 There were only five female child pornography offenders (0.3%); two of the five were convicted of a child pornography offense carrying a mandatory minimum penalty.

71 *See* 2017 OVERVIEW PUBLICATION, *supra* note 1, at 38 & Table 3.

72 *See* 2018 FIREARMS PUBLICATION, *supra* note 2, at 27.

73 *See id.*

74 2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 305.

75 *See* 2017 OVERVIEW PUBLICATION, *supra* note 1, at 39 & Fig. 9.

76 There were no Other Race receipt offenders. *See infra* Fig. 41.

77 There were only two Other Race possession (prior sex offense) offenders.

78 *See infra* at 14-15.

79 *See* 2017 OVERVIEW PUBLICATION, *supra* note 1, at 46 & Table 5.

80 *See id.*

81 The mandatory minimum status of two offenders could not be determined from the sentencing documentation.

82 2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 365.

83 2012 CHILD PORNOGRAPHY REPORT, *supra* note 37.

84 2011 MANDATORY MINIMUM REPORT, *supra* note 3, at 329.





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## Appendix A



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**Appendix A.** Mandatory Minimum Status for Sexual Abuse Offenders in Each Circuit and District<sup>1</sup>  
 Fiscal Year 2016

CIRCUIT	Sexual Abuse Offenders		Convicted of an Offense Carrying a Mandatory Minimum Penalty		Subject to Mandatory Minimum Penalty at Sentencing	
	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>1,148</b>	<b>100.0</b>	<b>726</b>	<b>100.0</b>	<b>667</b>	<b>100.0</b>
<b>D.C. CIRCUIT</b>	<b>9</b>	<b>0.8</b>	<b>4</b>	<b>0.6</b>	<b>3</b>	<b>0.5</b>
District of Columbia	9	0.8	4	0.6	3	0.5
<b>FIRST CIRCUIT</b>	<b>35</b>	<b>3.1</b>	<b>21</b>	<b>2.9</b>	<b>21</b>	<b>3.2</b>
Maine	6	0.5	3	0.4	3	0.5
Massachusetts	7	0.6	6	0.8	6	0.9
New Hampshire	7	0.6	2	0.3	2	0.3
Puerto Rico	9	0.8	8	1.1	8	1.2
Rhode Island	6	0.5	2	0.3	2	0.3
<b>SECOND CIRCUIT</b>	<b>73</b>	<b>6.4</b>	<b>55</b>	<b>7.6</b>	<b>49</b>	<b>7.4</b>
Connecticut	6	0.5	5	0.7	3	0.5
New York						
Eastern	17	1.5	14	1.9	13	2.0
Northern	12	1.1	12	1.7	12	1.8
Southern	8	0.7	5	0.7	5	0.8
Western	26	2.3	17	2.3	14	2.1
Vermont	4	0.4	2	0.3	2	0.3
<b>THIRD CIRCUIT</b>	<b>38</b>	<b>3.3</b>	<b>35</b>	<b>4.8</b>	<b>34</b>	<b>5.1</b>
Delaware	0	0.0	0	0.0	0	0.0
New Jersey	9	0.8	8	1.1	8	1.2
Pennsylvania						
Eastern	17	1.5	17	2.3	16	2.4
Middle	7	0.6	6	0.8	6	0.9
Western	5	0.4	4	0.6	4	0.6
Virgin Islands	0	0.0	0	0.0	0	0.0
<b>FOURTH CIRCUIT</b>	<b>97</b>	<b>8.5</b>	<b>59</b>	<b>8.1</b>	<b>55</b>	<b>8.3</b>
Maryland	13	1.1	9	1.2	7	1.1
North Carolina						
Eastern	9	0.8	4	0.6	4	0.6
Middle	4	0.4	2	0.3	1	0.2
Western	8	0.7	6	0.8	6	0.9
South Carolina	10	0.9	1	0.1	1	0.2
Virginia						
Eastern	40	3.5	30	4.1	29	4.4
Western	6	0.5	3	0.4	3	0.5
West Virginia						
Northern	5	0.4	2	0.3	2	0.3
Southern	2	0.2	2	0.3	2	0.3

CIRCUIT	Sexual Abuse Offenders		Convicted of an Offense Carrying a Mandatory Minimum Penalty		Subject to a Mandatory Minimum Penalty at Sentencing	
	Number	Percent	Number	Percent	Number	Percent
<b>FIFTH CIRCUIT</b>	<b>140</b>	<b>12.2</b>	<b>92</b>	<b>12.7</b>	<b>87</b>	<b>13.0</b>
Louisiana						
Eastern	13	1.1	7	1.0	5	0.8
Middle	1	0.1	0	0.0	0	0.0
Western	5	0.4	4	0.6	3	0.5
Mississippi						
Northern	1	0.1	1	0.1	1	0.2
Southern	2	0.2	1	0.1	1	0.2
Texas						
Eastern	12	1.1	8	1.1	8	1.2
Northern	32	2.8	24	3.3	23	3.5
Southern	50	4.4	31	4.3	30	4.5
Western	24	2.1	16	2.2	16	2.4
<b>SIXTH CIRCUIT</b>	<b>126</b>	<b>11.0</b>	<b>105</b>	<b>14.5</b>	<b>98</b>	<b>14.7</b>
Kentucky						
Eastern	14	1.2	13	1.8	13	2.0
Western	14	1.2	11	1.5	10	1.5
Michigan						
Eastern	29	2.5	26	3.6	23	3.5
Western	13	1.1	9	1.2	8	1.2
Ohio						
Northern	23	2.0	20	2.8	20	3.0
Southern	12	1.1	7	1.0	7	1.1
Tennessee						
Eastern	14	1.2	13	1.8	11	1.7
Middle	2	0.2	2	0.3	2	0.3
Western	5	0.4	4	0.6	4	0.6
<b>SEVENTH CIRCUIT</b>	<b>53</b>	<b>4.6</b>	<b>46</b>	<b>6.3</b>	<b>40</b>	<b>6.0</b>
Illinois						
Central	9	0.8	9	1.2	7	1.1
Northern	4	0.4	3	0.4	3	0.5
Southern	8	0.7	7	1.0	7	1.1
Indiana						
Northern	7	0.6	6	0.8	6	0.9
Southern	16	1.4	16	2.2	14	2.1
Wisconsin						
Eastern	6	0.5	3	0.4	1	0.2
Western	3	0.3	2	0.3	2	0.3
<b>EIGHTH CIRCUIT</b>	<b>174</b>	<b>15.2</b>	<b>97</b>	<b>13.4</b>	<b>91</b>	<b>13.6</b>
Arkansas						
Eastern	8	0.7	7	1.0	7	1.1
Western	19	1.7	17	2.3	15	2.3
Iowa						
Northern	0	0.0	0	0.0	0	0.0
Southern	11	1.0	8	1.1	8	1.2
Minnesota	23	2.0	14	1.9	14	2.1
Missouri						
Eastern	9	0.8	5	0.7	5	0.8
Western	26	2.3	21	2.9	20	3.0
Nebraska	10	0.9	5	0.7	5	0.8
North Dakota	33	2.9	14	1.9	11	1.7
South Dakota	35	3.1	6	0.8	6	0.9





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CIRCUIT District	Sexual Abuse Offenders		Convicted of an Offense Carrying a Mandatory Minimum		Subject to a Mandatory Minimum Penalty at Sentencing	
	Number	Percent	Number	Percent	Number	Percent
<b>NINTH CIRCUIT</b>	<b>201</b>	<b>17.5</b>	<b>78</b>	<b>10.7</b>	<b>64</b>	<b>9.6</b>
Alaska	3	0.3	3	0.4	3	0.5
Arizona	53	4.6	5	0.7	5	0.8
California						
Central	11	1.0	6	0.8	3	0.5
Eastern	11	1.0	10	1.4	10	1.5
Northern	10	0.9	5	0.7	3	0.5
Southern	40	3.5	14	1.9	10	1.5
Guam	0	0.0	0	0.0	0	0.0
Hawaii	2	0.2	1	0.1	1	0.2
Idaho	3	0.3	1	0.1	1	0.2
Montana	14	1.2	2	0.3	2	0.3
Nevada	10	0.9	4	0.6	3	0.5
Northern Mariana Islands	1	0.1	1	0.1	1	0.2
Oregon	11	1.0	8	1.1	5	0.8
Washington						
Eastern	14	1.2	8	1.1	7	1.1
Western	18	1.6	10	1.4	10	1.5
<b>TENTH CIRCUIT</b>	<b>67</b>	<b>5.8</b>	<b>35</b>	<b>4.8</b>	<b>34</b>	<b>5.1</b>
Colorado	11	1.0	7	1.0	7	1.1
Kansas	8	0.7	6	0.8	6	0.9
New Mexico	16	1.4	3	0.4	3	0.5
Oklahoma						
Eastern	0	0.0	0	0.0	0	0.0
Northern	8	0.7	6	0.8	5	0.8
Western	6	0.5	2	0.3	2	0.3
Utah	10	0.9	7	1.0	7	1.1
Wyoming	8	0.7	4	0.6	4	0.6
<b>ELEVENTH CIRCUIT</b>	<b>135</b>	<b>11.8</b>	<b>99</b>	<b>13.6</b>	<b>91</b>	<b>13.6</b>
Alabama						
Middle	3	0.3	0	0.0	0	0.0
Northern	8	0.7	6	0.8	6	0.9
Southern	3	0.3	1	0.1	1	0.2
Florida						
Middle	40	3.5	38	5.2	34	5.1
Northern	22	1.9	14	1.9	13	2.0
Southern	27	2.4	23	3.2	22	3.3
Georgia						
Middle	12	1.1	3	0.4	3	0.5
Northern	14	1.2	12	1.7	10	1.5
Southern	6	0.5	2	0.3	2	0.3

<sup>1</sup> Of the 67,742 cases sentenced in fiscal year 2016, the Commission received complete guideline information in 61,958 cases. The Commission did not receive complete guideline information for another 287 cases in which the only statute of conviction was 18 U.S.C. § 924(e) and 111 cases in which an offender was sentenced under 18 U.S.C. § 1028A and the guidelines were not applied, but these cases are included in the analysis. Of the remaining 63,357 cases, 105 were excluded due to missing statutory information.

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.



## Appendix B



United States Sentencing Commission  
 MANDATORY MINIMUM PENALTIES FOR FEDERAL SEX OFFENSES (2019)

**Appendix B.** Mandatory Minimum Status for Child Pornography Offenders in Each Circuit and District<sup>1</sup>  
 Fiscal Year 2016

CIRCUIT	Child Pornography Offenders		Convicted of an Offense Carrying a Mandatory Minimum Penalty		Subject to Mandatory Minimum Penalty at Sentencing	
	Number	Percent	Number	Percent	Number	Percent
<b>TOTAL</b>	<b>1,565</b>	<b>100.0</b>	<b>932</b>	<b>100.0</b>	<b>911</b>	<b>100.0</b>
<b>D.C. CIRCUIT</b>	<b>6</b>	<b>0.4</b>	<b>1</b>	<b>0.1</b>	<b>0</b>	<b>0.0</b>
District of Columbia	6	0.4	1	0.1	0	0.0
<b>FIRST CIRCUIT</b>	<b>59</b>	<b>3.8</b>	<b>18</b>	<b>1.9</b>	<b>18</b>	<b>2.0</b>
Maine	11	0.7	5	0.5	5	0.6
Massachusetts	17	1.1	10	1.1	10	1.1
New Hampshire	12	0.8	0	0.0	0	0.0
Puerto Rico	18	1.2	3	0.3	3	0.3
Rhode Island	1	0.1	0	0.0	0	0.0
<b>SECOND CIRCUIT</b>	<b>71</b>	<b>4.5</b>	<b>36</b>	<b>3.9</b>	<b>35</b>	<b>3.8</b>
Connecticut	1	0.1	1	0.1	0	0.0
New York						
Eastern	23	1.5	11	1.2	11	1.2
Northern	13	0.8	13	1.4	13	1.4
Southern	15	1.0	6	0.6	6	0.7
Western	16	1.0	5	0.5	5	0.6
Vermont	3	0.2	0	0.0	0	0.0
<b>THIRD CIRCUIT</b>	<b>72</b>	<b>4.6</b>	<b>36</b>	<b>3.9</b>	<b>35</b>	<b>3.8</b>
Delaware	2	0.1	2	0.2	2	0.2
New Jersey	14	0.9	7	0.8	7	0.8
Pennsylvania						
Eastern	31	2.0	15	1.6	15	1.7
Middle	5	0.3	3	0.3	2	0.2
Western	19	1.2	9	1.0	9	1.0
Virgin Islands	1	0.1	0	0.0	0	0.0
<b>FOURTH CIRCUIT</b>	<b>148</b>	<b>9.5</b>	<b>99</b>	<b>10.6</b>	<b>99</b>	<b>10.9</b>
Maryland	21	1.3	19	2.0	19	2.1
North Carolina						
Eastern	24	1.5	23	2.5	23	2.5
Middle	17	1.1	10	1.1	10	1.1
Western	22	1.4	15	1.6	15	1.7
South Carolina	13	0.8	4	0.4	4	0.4
Virginia						
Eastern	35	2.2	22	2.4	22	2.4
Western	4	0.3	4	0.4	4	0.4
West Virginia						
Northern	6	0.4	2	0.2	2	0.2
Southern	6	0.4	0	0.0	0	0.0

CIRCUIT	Child Pornography Offenders		Convicted of an Offense Carrying a Mandatory Minimum Penalty		Subject to a Mandatory Minimum Penalty at Sentencing	
	Number	Percent	Number	Percent	Number	Percent
<b>FIFTH CIRCUIT</b>	<b>225</b>	<b>14.4</b>	<b>116</b>	<b>12.5</b>	<b>112</b>	<b>12.3</b>
Louisiana						
Eastern	10	0.6	8	0.9	8	0.9
Middle	6	0.4	5	0.5	5	0.6
Western	7	0.5	4	0.4	4	0.4
Mississippi						
Northern	8	0.5	3	0.3	3	0.3
Southern	4	0.3	1	0.1	1	0.1
Texas						
Eastern	44	2.8	7	0.8	6	0.7
Northern	48	3.1	33	3.5	32	3.5
Southern	43	2.8	27	2.9	27	3.0
Western	55	3.5	28	3.0	26	2.9
<b>SIXTH CIRCUIT</b>	<b>177</b>	<b>11.3</b>	<b>137</b>	<b>14.7</b>	<b>135</b>	<b>14.8</b>
Kentucky						
Eastern	18	1.2	18	1.9	18	2.0
Western	12	0.8	10	1.1	9	1.0
Michigan						
Eastern	40	2.6	31	3.3	31	3.4
Western	11	0.7	11	1.2	11	1.2
Ohio						
Northern	43	2.8	41	4.4	41	4.5
Southern	17	1.1	6	0.6	6	0.7
Tennessee						
Eastern	24	1.5	13	1.4	12	1.3
Middle	5	0.3	2	0.2	2	0.2
Western	7	0.5	5	0.5	5	0.6
<b>SEVENTH CIRCUIT</b>	<b>78</b>	<b>5.0</b>	<b>54</b>	<b>5.8</b>	<b>51</b>	<b>5.6</b>
Illinois						
Central	21	1.3	18	1.9	16	1.8
Northern	3	0.2	2	0.2	2	0.2
Southern	12	0.8	6	0.6	6	0.7
Indiana						
Northern	6	0.4	4	0.4	4	0.4
Southern	20	1.3	14	1.5	13	1.4
Wisconsin						
Eastern	7	0.5	5	0.5	5	0.6
Western	9	0.6	5	0.5	5	0.6
<b>EIGHTH CIRCUIT</b>	<b>232</b>	<b>14.8</b>	<b>146</b>	<b>15.7</b>	<b>145</b>	<b>15.9</b>
Arkansas						
Eastern	10	0.6	2	0.2	2	0.2
Western	16	1.0	8	0.9	8	0.9
Iowa						
Northern	11	0.7	7	0.8	7	0.8
Southern	23	1.5	12	1.3	12	1.3
Minnesota	32	2.0	31	3.3	31	3.4
Missouri						
Eastern	46	2.9	22	2.4	22	2.4
Western	40	2.6	31	3.3	30	3.3
Nebraska	29	1.9	16	1.7	16	1.8
North Dakota	20	1.3	14	1.5	14	1.5
South Dakota	5	0.3	3	0.3	3	0.3





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CIRCUIT District	Child Pornography Offenders		Convicted of an Offense Carrying a Mandatory Minimum		Subject to a Mandatory Minimum Penalty at Sentencing	
	Number	Percent	Number	Percent	Number	Percent
<b>NINTH CIRCUIT</b>	<b>237</b>	<b>15.1</b>	<b>125</b>	<b>13.4</b>	<b>118</b>	<b>13.0</b>
Alaska	10	0.6	5	0.5	3	0.3
Arizona	19	1.2	3	0.3	2	0.2
California						
Central	26	1.7	10	1.1	9	1.0
Eastern	23	1.5	17	1.8	15	1.7
Northern	13	0.8	4	0.4	4	0.4
Southern	38	2.4	17	1.8	17	1.9
Guam	0	0.0	0	0.0	0	0.0
Hawaii	4	0.3	1	0.1	1	0.1
Idaho	5	0.3	3	0.3	2	0.2
Montana	10	0.6	4	0.4	4	0.4
Nevada	28	1.8	18	1.9	18	2.0
Northern Mariana Islands	1	0.1	0	0.0	0	0.0
Oregon	22	1.4	14	1.5	14	1.5
Washington						
Eastern	15	1.0	12	1.3	12	1.3
Western	23	1.5	17	1.8	17	1.9
<b>TENTH CIRCUIT</b>	<b>81</b>	<b>5.2</b>	<b>41</b>	<b>4.4</b>	<b>41</b>	<b>4.5</b>
Colorado	4	0.3	2	0.2	2	0.2
Kansas	14	0.9	11	1.2	11	1.2
New Mexico	8	0.5	5	0.5	5	0.6
Oklahoma						
Eastern	2	0.1	0	0.0	0	0.0
Northern	7	0.5	2	0.2	2	0.2
Western	8	0.5	3	0.3	3	0.3
Utah	27	1.7	16	1.7	16	1.8
Wyoming	11	0.7	2	0.2	2	0.2
<b>ELEVENTH CIRCUIT</b>	<b>179</b>	<b>11.4</b>	<b>123</b>	<b>13.2</b>	<b>122</b>	<b>13.4</b>
Alabama						
Middle	4	0.3	4	0.4	4	0.4
Northern	14	0.9	11	1.2	11	1.2
Southern	3	0.2	2	0.2	2	0.2
Florida						
Middle	70	4.5	57	6.1	56	6.2
Northern	9	0.6	9	1.0	9	1.0
Southern	46	2.9	31	3.3	31	3.4
Georgia						
Middle	7	0.5	1	0.1	1	0.1
Northern	19	1.2	8	0.9	8	0.9
Southern	7	0.5	0	0.0	0	0.0

<sup>1</sup> Of the 67,742 cases sentenced in fiscal year 2016, the Commission received complete guideline information in 61,958 cases. The Commission did not receive complete guideline information for another 287 cases in which the only statute of conviction was 18 U.S.C. § 924(c) and 111 cases in which an offender was sentenced under 18 U.S.C. § 1028A and the guidelines were not applied, but these cases are included in the analysis. Of the remaining 63,357 cases, 105 were excluded due to missing statutory information.

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

